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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, March 14, 2006
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Contents

Federal Register

Vol. 71, No. 31

Wednesday, February 15, 2006

Separate Parts In This Issue

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

14 CFR
39 7843
71 (2 documents) 7845, 7848
Proposed Rules:
39 (5 documents) ... 7874, 7876, 7878, 7880, 7883
71 (4 documents) ... 7887, 7888, 7890, 7897
121 7892
135 7892

18 CFR
131 7852
292 7852

21 CFR
870 7869
Proposed Rules:
892 7894

22 CFR
96 8064
97 8064
98 8064

29 CFR
4022 7871
4044 7871

46 CFR
Proposed Rules:
67 7897
68 7897

48 CFR
1802 7873
Proposed Rules:
Ch. 5 7910

Rules and Regulations

Federal Register
Vol. 71, No. 31
Wednesday, February 15, 2006

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22632; Directorate Identifier 2005–NM–158–AD; Amendment 39–14486; AD 2006–04–05]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) airplanes. This AD requires repetitive inspections for cracking or fracturing of the output links of the power control unit (PCU) for the ailerons, and related investigative and corrective actions if necessary. This AD results from reports of fractured output links of the aileron PCU. We are issuing this AD to prevent failure of an output link of the aileron PCU, which, if both links on one aileron fail, could result in reduced lateral control of the airplane.

DATES: This AD becomes effective March 22, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 22, 2006.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC.

Contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Daniel Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7305; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) airplanes. That NPRM was published in the **Federal Register** on October 7, 2005 (70 FR 58631). That NPRM proposed to require repetitive inspections for cracking or fracturing of the output links of the power control unit (PCU) for the ailerons, and related investigative and corrective actions if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request for Method of Tracking Output Links of the Aileron PCUs

The commenter, the National Transportation Safety Board (NTSB), supports the proposed AD, except that the NTSB suggests that we require the airplane manufacturer to develop and use a method for serializing and tracking individual output links of the aileron PCUs. The commenter observes that the output links do not have any identifying part number or serial number markings. The commenter states that this makes tracking an individual link difficult, especially since the proposed AD would require repetitive inspections.

We do not agree with the commenter's request. The output links of the aileron PCU are neither principal structural elements nor life-limited parts. Therefore, the Federal Aviation Regulations do not require each link to be marked with a serial number. The output links are marked with a part number and the manufacturing lot number of the top assembly (link and balls). These numbers are sufficient for tracking the output links in order to address potential issues with quality assurance.

Also, we note that the repetitive inspection interval of 1,000 flight hours is intended to be flight hours on the airplane, not on an individual output link. If a link is replaced with a new link between inspection cycles, the new link will be inspected at the next required inspection cycle. Thus, each link will always be inspected as required by this AD after no more than 1,000 flight hours. We find that tracking the output links by serial number would not add any additional level of safety. We have not changed the final rule in this regard.

Request To Explain Inspection Interval

The commenter also requests that we explain the rationale for establishing a repetitive inspection interval of 1,000 flight hours. The commenter notes that neither the proposed AD nor the referenced service bulletin (Bombardier Alert Service Bulletin A670BA–27–023, including Appendix A, Revision A, dated May 18, 2005) explains the rationale for this interval. The commenter is concerned that the interval may need to be reduced.

We agree to provide the clarification that the commenter requests, although we note that such a rationale is not normally stated in an AD unless we are disagreeing with the compliance time recommended by the cognizant airworthiness authority. (In this case, the proposed repetitive interval of 1,000 flight hours is consistent with the repetitive interval that Transport Canada Civil Aviation (TCCA), the

airworthiness authority for Canada, recommends in its parallel airworthiness directive.)

In developing an appropriate compliance time for this AD, we considered the manufacturer's recommendation and the degree of urgency associated with the subject unsafe condition, as well as the following:

• Data from failures of the output link in service on Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. There have been no link failures reported on Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), CL–600–2D15 (Regional Jet Series 705), or CL–600–2D24 (Regional Jet Series 900) airplanes, although the design of the aileron control system on these airplanes is the same as that on Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. A total of seven fractured output links have been reported in more than 12,000,000 flight hours accumulated on Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. Analysis of the data from the failed links reveals that the in-service failure rate is slightly in excess of the certification requirements. However, of the fractured links, the one with the lowest amount of time had accumulated approximately 6,000 flight hours.

• Laboratory analysis of failed links. Two of the fractured links were submitted to a laboratory for examination to determine the failure mode of the fracture, the metallurgical characteristics of the links and other components of the assembly, and the probable cause of the failure. The laboratory could not determine the cause of the failure or the crack growth rate. Based on this analysis, it was determined that an interim action—repetitive inspections for cracking or fracturing of the aileron PCU output links, and related investigative and corrective actions—was necessary.

• Maintenance and operational checks that are currently required to identify any failure in the aileron control system:

○ An operational test for PCU disconnect every A-check (approximately every 500 flight hours).

○ An aileron backlash check every 4,000 flight hours (currently in the process of being reduced to every 2,000 flight hours).

○ A test for PCU stiffness, and a detailed inspection of the PCU and flutter damper attachments for condition, safety of installation, and signs of leakage, and a detailed inspection of the PCU for signs of leakage, every C-check (approximately every 5,000 flight hours).

In light of all of these factors, we agree with TCCA that a 1,000-flight-hour repetitive interval represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. We have not changed the final rule in this regard.

Conclusion

We have carefully reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

Interim Action

We consider this AD interim action. The inspection reports that are required by this AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of the cracking, and eventually to develop final action to address the unsafe condition. Once final action has been identified, we may consider further rulemaking.

Costs of Compliance

This AD affects about 205 airplanes of U.S. registry. The required inspection will take about 1 work hour per airplane, per inspection cycle, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of this inspection for U.S. operators is $13,325, or $65 per airplane, per inspection cycle.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2006–04–05 Bombardier, Inc. (Formerly Canadair): Amendment 39–14486. Docket No. FAA–2005–22632; Directorate Identifier 2005–NM–158–AD.

Effective Date

(a) This AD becomes effective March 22, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the Bombardier airplanes identified in Table 1 of this AD, certificated in any category.

TABLE 1.—APPLICABILITY

Bombardier airplane models	Serial numbers
CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes.	10003 and subsequent.

TABLE 1.—APPLICABILITY—Continued

Bombardier airplane models	Serial numbers
CL–600–2D15 (Regional Jet Series 705) airplanes.	15001 and subsequent.
CL–600–2D24 (Regional Jet Series 900) airplanes.	15001 and subsequent.

Unsafe Condition

(d) This AD results from reports of fractured output links of the power control unit (PCU) for the ailerons. We are issuing this AD to prevent failure of an output link of the aileron PCU, which, if both links on one aileron fail, could result in reduced lateral control of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Repetitive Inspections, Related Investigative Actions, and Corrective Actions

(f) Prior to the accumulation of 2,000 total flight hours, or within 550 flight hours after the effective date of this AD, whichever is later: Do a detailed inspection for cracking or fracturing of the output links of the aileron PCU and do all related investigative and corrective actions, as applicable, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–27–023, including Appendix A, Revision A, dated May 18, 2005, except as provided by paragraph (g) of this AD. Thereafter, repeat the inspection and applicable related investigative and corrective actions at intervals not to exceed 1,000 flight hours. Any applicable related investigative and corrective actions must be done before further flight after the inspection.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Exception to Corrective Action Instructions

(g) If any cracking or other damage is found on an aileron lug or flange bushing during any inspection required by this AD, and the service bulletin recommends contacting Bombardier for appropriate action: Before further flight, disposition and replace the cracked or damaged aileron lug or flange bushing with a new part, in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA; or Transport Canada Civil Aviation (TCCA) (or its delegated agent).

Reporting

(h) Submit a report of the findings (both positive and negative) of the inspections required by paragraph (f) of this AD to Bombardier Aerospace; Attention: Christian Holzl, dept. 508; Location S666 1422 024; 13100 Highway 50; Mirabel, Quebec, J7M 3C6, Canada; fax (450) 476–7321. Submit the report at the applicable time specified in paragraph (h)(1) or (h)(2) of this AD. The report must include the airplane serial number, the total accumulated flight cycles and flight hours on the airplane, the date of the inspection, the total accumulated flight cycles and flight hours at the last ''C'' check, the serial number of each PCU, and the results of all inspections, tests, and measurements done in accordance with paragraph (f) of this AD. Submitting Appendix A of Bombardier Alert Service Bulletin A670BA–27–023, including Appendix A, Revision A, dated May 18, 2005, is an acceptable means of complying with this requirement. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspection was done after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Actions Accomplished Previously

(i) Inspections and corrective actions done, and reports submitted, before the effective date of this AD in accordance with Bombardier Alert Service Bulletin A670BA–27–023, including Appendix A, dated May 3, 2005, are acceptable for compliance with the corresponding requirements of paragraphs (f) and (h) of this AD.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, New York ACO, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(k) Canadian airworthiness directive CF–2005–23, dated June 29, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(l) You must use Bombardier Alert Service Bulletin A670BA–27–023, including Appendix A, Revision A, dated May 18, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on February 1, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–1295 Filed 2–14–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22398; Airspace Docket No. 05–ASO–7]

RIN 2120–AA66

Establishment of High Altitude Area Navigation Routes; South Central United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes 16 high altitude area navigation (RNAV) routes in the South Central United States in support of the High Altitude Redesign (HAR) program. The FAA is taking this action to enhance safety and to facilitate the more flexible and efficient use of the navigable airspace.

DATES: *Effective Date:* 0901 UTC, April 13, 2006.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On September 27, 2005, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish 16 RNAV routes in the South Central United States, within the airspace assigned to the Memphis Air Route Traffic Control Center (ARTCC) (70 FR 56391). The routes were proposed as part of the HAR program to enhance safety and facilitate the more flexible and efficient use of the navigable airspace for en route instrument flight rules (IFR) aircraft

operations. Interested parties were invited to participate in this rulemaking effort by submitting written comments on this proposal to the FAA. One comment was received in response to the NPRM. The comment supported the proposal.

High altitude area navigation routes are published in paragraph 2006 of FAA Order 7400.9N dated September 1, 2005 and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The area navigation routes listed in this document will be published subsequently in the order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing 16 RNAV routes in the South Central United States, within the airspace assigned to Memphis ARTCC. The FAA is taking this action in support of the HAR program to enhance safety and to facilitate the more flexible and efficient use of the navigable airspace for en route instrument flight rules (IFR) operations. This rule includes several corrections to the route descriptions published in the NPRM. In route Q–26, the name of the fix ''ABROC'' is being changed to ''DEVAC.'' This changes the fix name only; the latitude and longitude coordinates for the fix remain the same as published in the NPRM. In addition, the order of the points listed for routes Q–19 and Q–33 has been reversed to comply with policy that odd numbered routes be described with the points listed from South to North. This does not affect the actual alignment of routes Q–19 and Q–33. Except for these changes, the routes in this rule are the same as those proposed in the NPRM.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with Paragraph 311(a) of FAA Order 1050.1E, Environmental Impacts: Policies and Procedures. This airspace action is not expected to cause any potentially significant impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (air).

The Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporating by reference in 14 CFR 71.1 of FAA Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

Paragraph 2006 Area Navigation Routes.

* * * * * * *

Q–19 BNA to PLESS [New]

BNA	VORTAC	(Lat. 36°08′13″N., long. 86°41′05″W.)
PLESS	Fix	(Lat. 37°48′35″N., long. 88°57′48″W.)

* * * * * * *

Q–21 JONEZ to RZC [New]

JONEZ	Fix	(Lat. 34°30′57″N., long. 95°27′34″W.)
RZC	VORTAC	(Lat. 36°14′47″N., long. 94°07′17″W.)

* * * * * * *

Q–23 FSM to RZC [New]

FSM	VORTAC	(Lat. 35°23′18″N., long. 94°16′18″W.)
RZC	VORTAC	(Lat. 36°14′47″N., long. 94°07′17″W.)

* * * * * * *

Q–25 MEEOW to PXV [New]

MEEOW	Fix	(Lat. 34°19′05″N., long. 93°31′25″W.)
ARG	VORTAC	(Lat. 36°06′36″N., long. 90°57′13″W.)
WLSUN	WP	(Lat. 37°35′00″N., long. 88°08′00″W.)
PXV	VORTAC	(Lat. 37°55′42″N., long. 87°45′45″W.)

Q–26 ARG to DEVAC [New]

ARG	VORTAC	(Lat. 36°06′36″N., long. 90°57′13″W.)
DEVAC	Fix	(Lat. 34°37′05″N., long. 87°26′07″W.)

Q–27 FSM to ZALDA [New]

FSM	VORTAC	(Lat. 35°23′18″N., long. 94°16′18″W.)
ZALDA	WP	(Lat. 36°04′55″N., long. 93°37′37″W.)

Q–28 GRAZN to PXV [New]

GRAZN	WP	(Lat. 34°15′00″N., long. 94°21′29″W.)
PYRMD	WP	(Lat. 34°34′00″N., long. 93°44′00″W.)
HAKAT	WP	(Lat. 36°17′00″N., long. 91°04′00″W.)

ESTEE	WP	(Lat. 34°41′00″N., long. 88°17′00″W.)
PXV	VORTAC	(Lat. 37°55′42″N., long. 87°45′45″W.)

Q–29 HARES to PXV [New]

HARES	WP	(Lat. 33°00′00″N., long. 91°44′00″W.)
MEM	VORTAC	(Lat. 35°00′54″N., long. 89°59′00″W.)
SIDAE	WP	(Lat. 37°20′00″N., long. 87°50′00″W.)
PXV	VORTAC	(Lat. 37°55′42″N., long. 87°45′45″W.)

Q–30 SQS to VUZ [NEW]

SQS	VORTAC	(Lat. 33°27′50″N., long. 90°16′38″W.)
VUZ	VORTAC	(Lat. 33°40′13″N., long. 86°53′59″W.)

Q–31 DHART TO PXV [NEW]

DHART	Fix	(Lat. 33°23′52″N., long. 92°25′10″W.)
TOROS	WP	(Lat. 33°40′00″N., long. 92°10′00″W.)
UJM	VOR/DME	(Lat. 34°34′30″N., long. 90°40′28″W.)
TIIDE	WP	(Lat. 37°28′00″N., long. 87°59′00″W.)
PXV	VORTAC	(Lat. 37°55′42″N., long. 87°45′45″W.)

Q–32 ELD to SWAPP [New]

ELD	VORTAC	(Lat. 33°15′22″N., long. 92°44′38″W.)
GAGLE	WP	(Lat. 34°08′00″N., long. 90°17′00″W.)
CRAMM	Fix	(Lat. 34°38′11″N., long. 88°53′55″W.)
BNA	VORTAC	(Lat. 36°08′13″N., long. 86°41′05″W.)
SWAPP	Fix	(Lat. 36°36′50″N., long. 85°10′56″W.)

Q–33 DHART to PROWl [New]

DHART	Fix	(Lat. 33°23′52″N., long. 92°25′10″W.)
LIT	VORTAC	(Lat. 34°40′40″N., long. 92°10′50″W.)
PROWL	WP	(Lat. 37°02′00″N., long. 91°15′00″W.)

Q–34 TXK to SWAPP [New]

TXK	VORTAC	(Lat. 33°30′50″N., long. 94°04′24″W.)
MATIE	Vix	(Lat. 34°05′42″N., long. 92°33′02″W.)
MEM	VORTAC	(Lat. 35°00′54″N., long. 89°59′00″W.)
SWAPP	Fix	(Lat. 36°36′50″N., long. 85°10′56″W.)

* * * * * * *

Q–36 RZC to SWAPP [New]

RZC	VORTAC	(Lat. 36°14′47″N., long. 94°07′17″W.)
TWITS	WP	(Lat. 36°06′32″N., long. 90°54′48″W.)
DEPEC	WP	(Lat. 36°06′00″N., long. 87°31′00″W.)
BNA	VORTAC	(Lat. 36°08′13″N., long. 86°41′05″W.)
SWAPP	Fix	(Lat. 36°36′50″N., long. 86°10′56″W.)

* * * * * * *

Q–38 ROKIT to BESOM [New]

ROKIT	Fix	(Lat. 30°29′50″N., long. 94°30′50″W.)
INCIN	WP	(Lat. 31°21′09″N., long. 92°45′18″W.)
LAREY	WP	(Lat. 32°00′12″N., long. 91°22′22″W.)
BESOM	Fix	(Lat. 35°35′11″N., long. 87°39′23″W.)

* * * * * * *

Q–40 AEX to MISLe [New]

AEX	VORTAC	(Lat. 31°15′24″N., long. 92°30′04″W.)
DOOMS	WP	(Lat. 31°53′08″N., long. 91°09′56″W.)
SALVA	WP	(Lat. 32°38′00″N., long. 89°21′56″W.)
MISLE	WP	(Lat. 33°24′00″N., long. 87°38′00″W.)

* * * * * * *

Issued in Washington, DC on January 30, 2006.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. 06–1427 Filed 2–14–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Docket No. FAA–2005–22509; Airspace Docket No. 03–AWA–2

RIN 2120–AA66

Modification of the St. Louis Class B Airspace Area; MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the St. Louis, MO, (STL) Class B airspace area to contain large, turbine-powered aircraft operations to and from the new Runway 11/29 at the Lambert-St. Louis International Airport (KSTL), St. Louis, MO. The FAA is taking this action to enhance safety and improve the management of aircraft operations in the KSTL terminal area. Further, this effort supports the FAA's national airspace redesign goal of optimizing terminal and en route airspace areas to reduce aircraft delays and improve system capacity.

DATES: *Effective Date:* 0901 UTC, April 13, 2006.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On November 22, 2005, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify the STL Class B airspace area (70 FR 70558). The FAA proposed the action to enhance safety and improve the management of aircraft operations in the KSTL terminal area by containing large, turbine-powered aircraft operations to and from the new Runway 11/29 within the STL Class B airspace area.

As part of the FAA's Operational Evolution Plan, a new runway is under construction at KSTL. The new runway (Runway 11/29) is designed to provide a 51% increase in airport capacity and is scheduled to be commissioned in April, 2006. If the current Class B airspace area is not expanded, aircraft conducting instrument operations to this new runway will frequently need to intercept instrument approaches outside of the STL Class B airspace area. This action addresses that matter.

Discussion of Comments

International parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. The FAA received three comments as follows:

The Air Line Pilots Association, International (ALPA) concurred with the proposed modifications to the STL Class B airspace area and suggested raising the ceiling of the STL Class B airspace area from 8,000 feet above mean sea level (MSL) to 10,000 feet MSL in addition to the modifications proposed in the NPRM ''to further improve the safety of arrival and departure operation to and from [KSTL].'' The FAA considered raising the ceiling of Class B airspace early in the planning phase for this modification; however, the increase was opposed by the ad hoc committee and sufficient justification for raising the ceiling was not found. The FAA will continue to evaluate traffic volume and flow patterns in the KSTL terminal area to identify any future safety benefit that may be gained by raising the ceiling.

A second commenter also suggested raising the ceiling of the STL Class B airspace area to 10,000 feet MSL. The FAA does not support that view as discussed above. Additionally, the commenter expressed a concern with using geographical references because pilots not familiar with the area may have difficulty identifying them. He suggested using radials of the Troy Very High Frequency Omni-Range (VOR) to delineate the boundaries of the ''keyhole'' to the northeast of KSTL. The FAA disagrees with using the Troy VOR rather than geographical features to describe the boundaries of Class B airspace. The ad hoc committee specifically expressed their desire to use geographical landmarks wherever possible to facilitate a visual flight rules (VFR) pilot's ability to identify boundaries. Further, adoption of this suggestion would unnecessarily expand the amount of Class B airspace beyond what is actually needed to contain large, turbine-powered aircraft within the STL Class B airspace area.

That commenter also suggested ''eliminating Area I or standardizing its floor with the adjacent Area G.'' The FAA finds that designating Area I is necessary to contain large, turbine-powered aircraft utilizing the TRAKE 8 Arrival to the new Runway 11. Further, the suggestion to lower the floor of this area to 4,500 feet MSL (to coincide with the floor of Area G) would result in airspace being added to Class B that is not necessary to contain large turbine-powered aircraft within the STL Class B airspace area.

The third commenter suggested using a river to the north of KSTL as a boundary for the STL Class B surface area. This would provide a visual reference for VFR pilots. This suggestion had been considered but not adopted by the ad hoc committee. While the Missouri River will no longer define this boundary, pilots may use the Cardinal VOR/DME or visual references such as Highway 94 or Route H to identify the boundary. Further, the FAA believes that expanding the Class B surface area to the northwest and north of KSTL is necessary to contain large, turbine-powered aircraft departing Runway 29 that turn northbound.

The third commenter also requested that the floor of the STL Class B airspace area remain at 2,000 feet MSL over the St. Charles Airport (3SQ) rather than lowering it to 1,700 feet MSL. The FAA believes that lowering the floor of Class B airspace over 3SQ is necessary to ensure that large, turbine-powered aircraft arriving Runway 11 or departing Runway 29 are contained within the STL Class B airspace area. Further, because the traffic pattern altitude at the 3SQ is 1,100 feet MSL, aircraft may continue their practice of flying over the traffic pattern at 1,600 feet MSL without entering the STL Class B airspace area. This practice will also provide sufficient vertical separation between aircraft flying over 3SQ and large, turbine-powered aircraft operating to and from Runway 11/29.

The coordinates for this airspace docket are based on North American Datum 83. Class B airspace areas are published in paragraph 3000 of FAA Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR section 71.1. The Class B airspace area listed in this document would be published subsequently in the order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying the STL Class B airspace area. Specifically, this action (depicted on the attached chart) modifies Areas A, B, C, D, E, F, G, and H. It also re-designates a portion of the current Area

G as a new Area H and designates a new Area I. The FAA is taking this action to improve the management of aircraft operations in the STL terminal area and enhance safety by expanding the dimensions of the STL Class B airspace area to protect large, turbine-powered aircraft operations to and from the new Runway 11/29 at KSTL. Additionally, this action supports various efforts to enhance the efficiency and capacity of the National Airspace System

Regulatory Evaluation Summary

Changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small businesses and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this final rule: (1) Will generate benefits that justify its circumnavigation costs and is not a ''significant regulatory action'' as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; (4) will not constitute a barrier to international trade; and (5) will not contain any Federal intergovernmental or private sector mandate. These analyses are summarized here in the preamble, and the full Regulatory Evaluation is in the docket.

This final rule will modify the St. Louis, MO, Class B airspace. The final rule will reconfigure the sub-area boundaries, raise the altitude ceiling in certain segments of the airspace and lower the altitude floor in certain segments.

The final rule will generate benefits for system users in the form of enhanced operational efficiency and simplified navigation in the St. Louis terminal area. These modifications will impose some costs (an additional 5 NM circumnavigation around the expanded controlled airspace) on operators of non-compliant aircraft. However, the cost of circumnavigation is considered to be small. Thus, the FAA has determined this final rule will be cost-beneficial.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to consider flexible regulatory proposals, to explain the rationale for their actions, and to solicit comments. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions. Agencies must perform a review to determine whether a rulemaking action will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a rulemaking action is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule may impose some circumnavigation costs on individuals operating in the St. Louis terminal area; but the final rule will not impose any costs on small business entities. Operators of general aviation aircraft are considered individuals, not small business entities and are not included when performing a regulatory flexibility analysis. Flight schools are considered small business entities. However, the FAA assumes that they provide instruction in aircraft equipped to navigate in Class B airspace given they currently provide instruction in the St. Louis terminal area. Therefore, these small entities should not incur any additional costs as a result of the final rule. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies this final rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it will impose the same costs on domestic and international entities and thus have a neutral trade impact.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million

This rulemaking action does not contain such a mandate. The requirements of Title II do not apply.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND CLASS E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

Paragraph 3000 Class B Airspace

* * * * *

ACE MO B St. Louis, MO [Revised]

Lambert-St. Louis International Airport
(Primary Airport)
(Lat. 38°44′52″ N., long. 90°21′36″ W.)
Creve Coeur Airport
(Lat. 38°43′36″ N., long. 90°30′30″ W.)
St. Charles Municipal Airport
(Lat. 38°50′55″ N., long. 90°30′00″ W.)
Cardinal VOR/DME (CSX)
(Lat. 38°45′10″ N., long. 90°21′39″ W.)
Foristell VORTAC
(Lat. 38°41′40″ N., long. 90°58′17″ W.)
ILS Runway 30L Localizer
(Lat. 38°45′17″ N., long. 90°22′52″ W.)

Boundaries

Area A. That airspace extending from the surface to and including 8,000 feet MSL within a 6-mile DME radius of the Cardinal VOR/DME excluding that airspace within the 1.5NM radius of the Creve Coeur Airport.

Area B. That airspace extending upward from 1,700 feet MSL to and including 8,000 feet MSL within a 10-mile DME radius of the Cardinal VOR/DME beginning at the intersection of the 6-mile DME arc and Page Avenue, then westward along Page Avenue to Missouri Route 94, then westward along Missouri Route 94 to the intersection of Missouri Route 94 and the 10-mile DME arc, then clockwise along the 10-mile DME arc to the intersection of the 10-mile DME arc and the power lines located 2NM north of the St. Charles Municipal Airport, then southeast along the power lines to the intersection of the power lines and the 6-mile DME arc, then counterclockwise along the 6-mile DME arc to the intersection of the 6-mile DME arc and the 1.5NM radius arc of the Creve Coeur Airport, then clockwise along the 1.5NM arc of the Creve Coeur Airport to the intersection of the 1.5NM arc of the Creve Coeur Airport and the 6-mile DME arc, then counterclockwise along the 6-mile DME arc to the point of beginning.

Area C. That airspace extending upward from 2,000 feet MSL to and including 8,000 feet MSL within a 10-mile DME radius of the Cardinal VOR/DME, excluding Areas A, B, and D.

Area D. That airspace extending upward from 2,500 feet MSL to and including 8,000 feet MSL within a 10-mile DME radius of the Cardinal VOR/DME, bounded on the south by the 10-mile DME arc and on the north by Interstate 64.

Area E. That airspace extending upward from 3,000 feet MSL to and including 8,000 feet MSL within a 15-mile DME radius of the Cardinal VOR/DME, excluding Areas A, B, C, and D.

Area F. That airspace extending upward from 3,500 feet MSL to and including 8,000 feet MSL within a 20-mile DME radius of the Cardinal VOR/DME, northwest of the Cardinal VOR/DME, beginning at the intersection of Interstate 64 and the 20-mile DME radius, clockwise along the 20-mile DME arc to the intersection of the 20-mile DME arc and the island in the Illinois River (lat. 39°02′ 23″ N., long. 90°34′40″ W.), then along a line direct to the 15-mile DME arc centered on Grafton, Illinois (lat. 38°59′12″ N., long. 90°28′20″ W.), then counterclockwise along the 15-mile DME arc to the intersection of the 15-mile DME arc and Interstate 64, then west along Interstate 64 to the point of beginning; and that airspace, southeast of the Cardinal VOR/DME, beginning at the intersection of the 20-mile DME arc of the Cardinal VOR/DME and Interstate 270, then clockwise along the 20-mile DME arc to the intersection of the 20-mile DME arc and Illinois Route 3, then northwest along Illinois Route 3 to the intersection of Illinois Route 3 and Interstate 255, then northwest along Interstate 255 to the 15-mile DME arc, then counterclockwise along the 15-mile DME arc to the intersection of the 15-mile DME arc and Interstate 270, then east along Interstate 270 to the point of beginning.

Area G. That airspace extending upward from 4,500 feet MSL to and including 8,000 feet MSL within a 30-mile DME radius of the Cardinal VOR/DME, southeast of the Cardinal VOR/DME, beginning at the intersection of the 30-mile DME arc and Victor 4 Low Altitude Airway, then northwest along Victor 4 to the intersection of Victor 4 and the 20-mile DME arc, then clockwise along the 20-mile DME arc to the intersection of the 20-mile DME arc and Illinois Route 3 (Columbia, Illinois), then southeast along a line parallel to the runway 30L localizer course to intersect the 30-mile DME arc, then counterclockwise along the 30-mile DME arc to the point of beginning; and that airspace, northwest of the Cardinal VOR/DME, beginning at the Cardinal VOR/DME 320° radial at 30 DME, then counterclockwise along the 30-mile DME arc to the Cardinal VOR/DME 286° radial at 30 DME, then along a line southeast direct to the Cardinal VOR/DME 277° radial at 20 DME, then clockwise along the 20-mile DME arc to the intersection of the 20-mile DME arc and the island in the middle of the Illinois River (lat. 39°02′23″ N., long. 90°34′40″ W.), then along a line northwest direct to the point of beginning.

Area H. That airspace extending upward from 5,000 feet MSL to and including 8,000 feet MSL within a 20-mile DME radius of the Cardinal VOR/DME, excluding Areas A, B, C, D, E, and F.

Area I. That airspace extending upward from 5,000 feet MSL to and including 8,000 feet MSL within a 30-mile DME radius of the Cardinal VOR/DME, beginning at the Cardinal VOR/DME 286° radial at 30 DME, then counterclockwise along the 30-mile DME arc to the intersection of the 30-mile DME arc and the power line 2.5NM northwest of the Foristell VORTAC, then east along the power line to the intersection of the power line and the 20-mile DME arc, then clockwise along the 20-mile DME arc to the Cardinal VOR/DME 277° radial at 20 DME, then along a line northwest direct to the point of beginning.

* * * * *

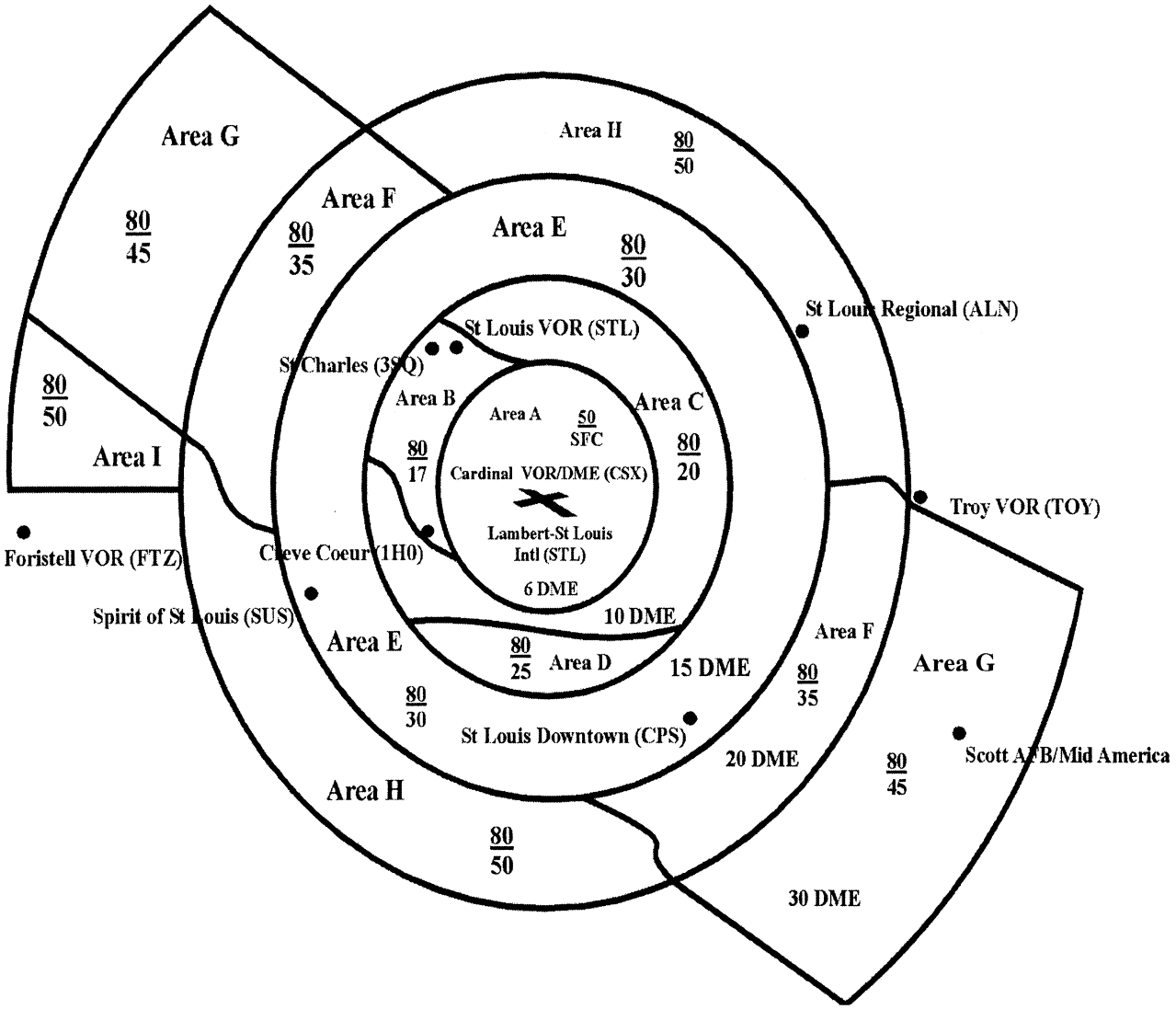
Issued in Washington, DC, on February 7, 2006.

Edith V. Parish,

Manager, Airspace and Rules.

BILLING CODE 4910–13–P

ST. LOUIS, MO
CLASS B AIRSPACE AREA



NOT TO BE USED FOR NAVIGATION

ASD 03-AWA-2

[FR Doc. 06–1429 Filed 2–14–06; 8:45 am]
BILLING CODE 4910–13–C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 131 and 292

[Docket No. RM05–36–000; Order No. 671]

Revised Regulations Governing Small Power Production and Cogeneration Facilities

Issued February 2, 2006.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: Pursuant to section 1253 of the Energy Policy Act of 2005 (EPAct 2005) and section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA), the Federal Energy Regulatory Commission (Commission) revises 18 CFR parts 131 and 292 to implement amended regulations governing qualifying cogeneration and small power production facilities.

DATES: *Effective Date:* The rule will become effective March 17, 2006.

FOR FURTHER INFORMATION CONTACT:

Paul Singh (Technical Information), Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8576.

Samuel Higginbottom (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8561.

Eric D. Winterbauer (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8329.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly.

I. Introduction

1. On August 8, 2005, the Energy Policy Act of 2005 (EPAct 2005) [1] was signed into law. Pursuant to section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA), as modified by section 1253 of EPAct 2005,[2] the Federal Energy Regulatory Commission (Commission) hereby issues a rule that (1) ensures that new qualifying cogeneration facilities are using their thermal output in a productive and beneficial manner; that the electrical, thermal, chemical and mechanical output of new qualifying cogeneration facilities is used fundamentally for industrial, commercial, residential or institutional purposes; and that there is continuing progress in the development of efficient electric energy generating technology; (2) amends Form 556 [3] to reflect the criteria for new qualifying cogeneration facilities; (3) eliminates ownership limitations for qualifying cogeneration and small power production facilities; and (4) amends the exemptions available to qualifying facilities (QFs) from the requirements of the Federal Power Act (FPA) [4] and the Public Utility Holding Company Act of 1935 (PUHCA).[5]

2. As discussed below, on October 11, 2005, the Commission issued a notice of proposed rulemaking (NOPR) [6] in which it proposed certain modifications and revisions to its regulations governing small power production and cogeneration facilities. Numerous comments were filed by a variety of entities.

3. In this Final Rule, the Commission adopts some of the proposals in the NOPR as well as many of the commenters' recommendations. Specifically, the Final Rule:

(A) Adopts the NOPR's proposal to require applicants to demonstrate that the thermal output of a new cogeneration facility is used in a productive and beneficial manner;

(B) Adopts a case-by-case approach for determining the ''fundamental'' use of a facility's electrical, thermal, chemical and mechanical output;

(C) Retains the existing operating and efficiency standard for new oil and gas cogeneration facilities;

(D) Retains the option for new cogeneration facilities to self-certify as QFs;

(E) Eliminates certain exemptions from regulation that were previously granted to QFs;

(F) Eliminates the ownership limitations for all QFs;

(G) Retains the ownership disclosure requirement in the Commission's Form 556; and

(H) Clarifies that there is a rebuttable presumption that an existing QF does not become a ''new cogeneration facility'' when it files an application for recertification reflecting either a change in ownership or a change in operation.

4. This Final Rule will be effective on March 17, 2006.

II. Notice of Proposed Rulemaking

5. On October 18, 2005, the NOPR was published in the **Federal Register**.[7] As discussed in more detail below, the Commission proposed to revise its regulations governing small power production and cogeneration pursuant to section 1253 of EPAct and section 210 of PURPA.

III. Discussion

A. Productive and Beneficial

1. Background

6. Section 210(n) of PURPA requires the Commission to issue a rule revising the criteria for new cogeneration facilities to ensure that those facilities meet the requirements of section 210(n)(1)(A) of PURPA, including that the thermal output of a new qualifying cogeneration facility be used in a ''productive and beneficial manner.'' We explained in the NOPR that the Commission has traditionally relied on a presumptively useful standard that was irrebuttable in determining whether a cogeneration's facility's thermal output is useful. To implement PURPA's new ''productive and beneficial'' requirement for a new qualifying cogeneration facility's thermal output, the Commission proposed to consider the presumption of usefulness to be rebuttable rather than irrebuttable. The Commission also proposed to consider the uses to which the product produced by the thermal output is put, including such factors as whether the product is needed and whether there is a market, in determining whether a new qualifying cogeneration facility's thermal output is ''productive and beneficial.''

2. Comments

7. Most commenters support the Commission's proposal to eliminate the ''presumption of usefulness'' standard in determining whether the thermal energy output of a new cogeneration facility is used in a ''productive and beneficial'' manner. The California Electricity Oversight Board (CEOB) notes that the irrebuttable presumption has resulted in default granting of qualifying status to applicants even where there was no real need for the thermal output. Delta Power Company, *et al.*, support the elimination of the irrebuttable presumption of usefulness. They suggest, moreover, that the

[1] Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

[2] Pub. L. 109–58, § 1253, 119 Stat. 594, 967–70 (2005).

[3] Form 556 is set forth in 18 CFR 131.80 (2005).

[4] 16 U.S.C. 824 *et seq.* (2000).

[5] 15 U.S.C. 79 (2000); Pub. L. 109–58, §§ 1261–77, 119 Stat. 594, 972–78 (2005).

[6] *Revised Regulations Governing Small Power Production and Cogeneration Facilities,* 70 FR 60456 (Oct. 18, 2005), FERC Stats. & Regs. ¶ 32,590 (2005).

[7] *Id.*

Commission apply a rebuttable presumption that both a thermal use is ''genuine and legitimate'' and ''productive and beneficial'' if a facility demonstrates that its thermal output would be supplied to the host from other means; a challenger would have the opportunity to prove otherwise. Primary Energy Ventures LLC (Primary Energy) and U.S. Combined Heat and Power Association (USCHPA) support a case-by-case review of the ''productive and beneficial'' standard. Both commenters believe a QF applicant should support the application with adequate reference to the business and economic circumstances of the individual facility. North Carolina Eastern Municipal Power Agency (NCEMPA) advocates that the Commission continue to apply the ''presumptively useful'' standard to small QFs because the alleged abuses have occurred in the context of large ''PURPA machines.''

8. Several commenters argued that the irrebuttable presumption of usefulness should remain in effect in some situations. American Forest & Paper Association (American Forest & Paper) recommends the Commission not abandon an irrebuttable presumption of usefulness for many industrial applications, such as papermaking. American Forest & Paper argues that a rebuttable presumption of usefulness could open up applicants who are engaged in traditional manufacturing processes to the threat of litigation over the usefulness of their enterprise by cogeneration opponents. American Forest & Paper believes that the presumptively useful standard served a legitimate purpose in encouraging the development of qualifying facilities by creating certainty, limiting wasteful litigation and expediting the review process. A properly revised standard, which provided assurance to developers and the utility industry that certain, well-recognized industrial applications would not be mired in litigation and controversy, could continue to play an important role in encouraging the development of cogeneration. Certain well-recognized industrial processes, such as papermaking, chemical production, petroleum refining and others, should continue to enjoy a very strong, if not irrebuttable, presumption of usefulness.

9. Cinergy Solutions, Inc. (Cinergy) argues that the presumption of usefulness for common industrial or commercial applications of thermal energy should be rebuttable only when a new thermal host is being developed in conjunction with the development of the cogeneration facility and the presumption should remain irrebuttable when an economically self-sustaining thermal host already exists at the site. Cinergy states that the presumption of usefulness, whether rebuttable or irrebuttable, should depend on the circumstances of the thermal host. Cinergy advocates that the presumption of usefulness should be irrebuttable where a thermal host is in existence prior to the development of a cogeneration facility. Finally, Cinergy notes that a change to a rebuttable presumption creates unnecessary uncertainty and could substantially reduce usage and the effectiveness of the self-certification process.

10. Cogeneration Coalition of Washington and the Nevada Independent Energy Coalition (collectively, QF Parties) support identifying current uses of thermal output that are ''productive and beneficial'' as that would provide certainty to the cogeneration owner and developer. QF Parties propose specific uses to be identified in the regulation that could include, but not be limited to, paper making, the drying of products such as wallboard, steam used in enhanced oil recovery, and refining and chemical production.

11. Several commenters contend that the thermal use standard needs to be clear and unambiguous which would provide QFs regulatory certainty. The Public Service Electric and Gas Company jointly with the Texas-New Mexico Power Company (PSNM and TNMP) believe the Commission should not rely on ''rebuttable'' or ''irrebuttable'' presumptions, but should set out unambiguous standards that QF applicants are required to satisfy as a part of their application so that resort to a presumption is unnecessary. Clear, objective qualification standards are necessary in order for QF applicants, their investors, utilities, and the Commission itself to be able to intelligently evaluate whether the statutory ''productive and beneficial'' requirement has been met.

12. Cogentrix Energy, Inc. and Goldman Sachs Group, Inc. (collectively, Independent Sellers), state that the Commission has not proposed any ascertainable standards to assist cogenerators in determining whether they will meet the new requirements that will be set forth in 18 CFR 292.205(d). They point out that the Commission's existing standard is an ascertainable one in that if the use of the thermal output constitutes a common industrial or commercial application then it is presumptively useful and no further analysis is required. The presumptively useful standard provides regulatory certainty that is critical to entities that invest in cogeneration facilities. Cogentrix argues that a rebuttable presumption of usefulness creates uncertainty that would harm investment in cogeneration.

13. Indeck Energy Services, Inc. (Indeck) supports a rebuttable presumption of usefulness, but cautions that the proposed new regulations would make it difficult, if not infeasible, to obtain financing or build new cogeneration facilities. Indeck claims a case-by-case approach injects uncertainty at both the construction phase and when the QF attempts to make facility changes. Indeck advocates for a bright line test or at least clear standards that remove all ambiguity concerning what constitutes acceptable uses of thermal output.

14. Some commenters believe that the Commission's rebuttable presumption of usefulness proposal is not enough. Edison Electric Institute (EEI) states that making the previous presumption that any common use of thermal energy is useful rebuttable rather than irrebuttable does not satisfy the new ''productive and beneficial'' test. EEI argues that the Commission should instead require QF applicants to provide evidence, including economic studies, financial projections, contracts, and other data to indicate that the thermal use of a facility will be used in a ''productive and beneficial'' manner. Many commenters endorsed EEI's comments.

15. In reply comments, EEI opposes those comments that suggest the Commission should retain its ''presumptively useful'' policy without change as the means of demonstrating that the thermal energy output will be used in a ''productive and beneficial'' manner. EEI argues that just because the thermal output is used in a ''common'' or ''useful'' way does not ensure that the thermal energy use is ''productive and beneficial,'' which EEI equates with ''economic.'' EEI reiterates its belief that the only way for the Commission to ensure that the ''productive and beneficial'' requirement is met is for the Commission to promulgate in its regulations a list of the financial data and studies that will be required to satisfy the determination mandated by the statute.

16. Several commenters disagree with EEI's proposal. Delta Power, *et al.,* contend that EEI's proposal to require economic analyses distorts the purpose of section 210 of PURPA by requiring economic analyses. Process Gas Consumers Group Electricity Committee argues that EEI's proposal would discourage cogeneration by increasing

the costs and risks of the regulatory process.

3. Commission Determination

17. To implement section 210(n)(1)(A)(i) of PURPA, which requires ''that the thermal output of the cogeneration facility is used in a productive and beneficial manner,'' the Commission will incorporate the statutory standard into its regulations. The Final Rule accordingly will require an applicant to demonstrate that a new cogeneration facility's thermal output is used in a productive and beneficial manner. As we said in the NOPR, the Commission prior to the enactment of EPAct 2005, in deciding whether to grant certification, traditionally relied on a ''presumptively useful'' standard that was essentially irrebuttable in determining whether a QF's thermal output is ''useful.'' The Commission finds that ''productive and beneficial'' is nearly synonymous with ''useful,'' but was intended to require the Commission to take a closer look at the use of the thermal output of a new cogeneration facility; the Commission's examination of the use of thermal output of a new cogeneration facility is intended to weed out those uses that are ''shams.'' Thus, the Commission, as a starting point in its analysis of the use of a new cogeneration facility's thermal output, will look to see if the new cogeneration's thermal output is ''presumptively useful.'' As we stated in the NOPR, however, the Commission will no longer consider this presumption to be ''irrebuttable.'' The Commission will examine the use of a cogeneration facility's thermal output to assure that the use is not a ''sham,'' and that the thermal output is used in a ''productive and beneficial manner.'' In determining whether the thermal output is used in a ''productive and beneficial manner,'' the Commission will consider factors such as whether the product produced by the thermal energy is needed and whether there is a market for the product. Consistent with the arguments of Cinergy, we find that where a thermal host existed prior to the development of a cogeneration facility whose thermal output will supplant the thermal source currently in use by that thermal host, it is appropriate to presume that the thermal output of such facility is productive and beneficial and to apply a very high hurdle to overcome the presumption. We foresee only rare circumstances in which the output of a facility would not be productive and useful if it is replacing a previously used thermal source.

18. Form 556 is being amended to include a new section in which a new cogeneration QF applicant must show ''the thermal energy output of the cogeneration facility is used in a productive and beneficial manner.'' [8] The initial burden of demonstrating compliance with this new standard is on the new cogeneration QF applicant.

19. We decline to institute a bright line test or specific standards concerning what constitutes acceptable uses of thermal output. The type of information that a new cogeneration QF applicant must provide will vary depending on the thermal output of the cogeneration facility and on the circumstances of the thermal host. The level of support needed may vary depending on the product produced by the thermal energy, the intended use of that product in the market and the level of need for the particular product. As we stated in the NOPR, in some geographic areas, thermal energy used to produce distilled water can be used in a productive and beneficial manner, but in other geographic areas it may not. Therefore, any application for QF status for new cogeneration facilities must provide enough detailed information, as prescribed in the updated Form 556,[9] for the Commission to determine compliance with the new ''productive and beneficial'' standard.

20. EEI's proposal to require economic or financial studies to show compliance with the ''productive and beneficial'' standard is misplaced. Our interpretation of the meaning of ''productive and beneficial'' in the context of cogeneration is that there is a real, genuine need for the thermal output of the facility. Relying solely on an economic analysis of the type suggested by EEI, however, may be too narrow and may deny certification to cogeneration facilities which produce thermal output that ''is used in a productive and beneficial manner.'' Adopting a case-by-case approach that permits an applicant the opportunity to demonstrate, whether through narrative description or economic analysis, that its QF will have a ''productive and beneficial'' thermal output will provide a sufficient means to detect situations where the thermal output's application is not productive and beneficial. An applicant may receive a determination that its thermal output is being used in a productive and beneficial manner if it can show through a narrative description of the facility's operations that the use of the facility's thermal output is for a common industrial or commercial application, and that the proposed use is genuine, and not merely to allow the applicant to achieve QF status, *i.e.,* a ''sham''; a detailed economic analysis will not be necessary in most cases. However, the Commission reserves the right to require additional support when appropriate.

21. Many commenters request the Commission to identify current uses of thermal energy that would satisfy the new ''productive and beneficial'' standard. We decline to do so because a thermal use may be ''productive and beneficial'' in some circumstances and not ''productive and beneficial'' in others (*e.g.,* the production of distilled water).

22. Several commenters call for the Commission to institute a clear and unambiguous standard which they claim would provide needed regulatory certainty. While the Commission recognizes the value of regulatory certainty, we believe that the case-by-case process proposed in the NOPR and adopted here will provide a better means to determine what satisfies the ''productive and beneficial'' standard of section 210(n) of PURPA.

23. We note that the Commission does not intend to change current standards related to the thermal output for existing cogeneration facilities; as discussed later in the Final Rule, the standards for new cogeneration facilities adopted herein will apply to new cogeneration facilities and not existing cogeneration facilities.

24. In the NOPR, we stated that we would consider the previously irrebuttable presumption of usefulness to be a rebuttable presumption. Some of the comments suggest a misunderstanding of the meaning of the term ''rebuttable presumption.'' Many in the QF industry fear, in particular, that new cogeneration facilities, once they have been certified as QFs, will be subject to post-certification challenges to their QF status alleging that the thermal output of a facility has become no longer ''productive and beneficial.''

25. We address here two circumstances: Certification of new cogeneration facilities; and post-certification challenges after the new cogeneration facilities have been certified. We clarify that, in proceedings for Commission certification of new cogeneration facilities, if certain uses of thermal output were previously considered ''presumptively useful'' under the prior regulations and case precedent, they will be considered ''productive and beneficial'' uses, but those who oppose certification will have the opportunity to demonstrate that the thermal output is not, in fact, being used in a productive and beneficial manner.

[8] *See* 18 CFR 131.80, part C, 15(i) (2005).

[9] QF applicants may provide studies or testimony to support compliance with this new standard.

However, once the Commission has granted a new cogeneration facility certification based on the new standard adopted herein, the issue of that particular QF's use of its thermal output is determined, even if the economics of a particular use may change over time. Unless there are changes in the way the QF operates, such that it does not operate as described in the application for certification, and thus no longer meets the statutory criteria, a QF may continue to rely on the Commission's certification of its facility even if the economics of the particular use have changed over time. Thus, after a QF has been certified by the Commission, absent a change in the operations of the facility, a purchaser of the electrical output of a new cogeneration facility may not return to the Commission to allege that the thermal output of a facility is not ''productive and beneficial.''

26. Finally, in applying our new regulation implementing section 210(n)(1)(A)(i) of PURPA, § 292.203(d)(1) of our regulations, we will apply a rebuttable presumption that new cogeneration facilities that are 5 MW or smaller satisfy the requirement that the thermal energy output of the new cogeneration facility is used in a productive and beneficial manner. We will apply this presumption because it is our experience that such small cogeneration facilities are not generally designed with a ''sham'' use of thermal output whose only purpose is to achieve QF status. Rather, such smaller cogeneration facilities are designed to meet the thermal needs of the facility's steam host and any electrical output available for sale is a byproduct of the thermal process.

B. Fundamentally Requirement

1. Background

27. Section 210(n)(1)(A)(ii) of PURPA requires the Commission to revise § 292.205 of its regulations to ensure the electrical, thermal, and chemical output of a new cogeneration facility is used fundamentally for industrial, commercial, or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a qualifying facility to its host facility. The NOPR proposed to incorporate the language of section 210(n)(1)(A)(ii) of PURPA as § 292.205(d)(ii) of the Commission's regulations, and to apply this language on a case-by-case basis to determine whether a new cogeneration facility can be considered a qualifying cogeneration facility. In addition, the Commission proposed adding the term ''mechanical'' output to the statutory criteria, because this has traditionally been a part of the Commission's analysis of cogeneration output, and is consistent with the statutory language.

28. As described in the NOPR, applications for certification under new section 210(n) of PURPA, and under new § 292.205(d)(ii) of our regulations, would be required to provide a detailed explanation of how the cogeneration facility meets the requirements of those sections. The NOPR requested comments on whether we should adopt this general case-by-case approach for determining the ''fundamental'' use of a facility's output, or whether we should adopt a specific standard, *e.g.,* requiring some specified percentage of the total energy output to be used for industrial, commercial, or institutional purposes, rather than for sale to electric utilities.

2. Comments

29. Many commenters favor a case-by-case evaluation of compliance to the new ''fundamentally'' requirement, and argue (1) that the different operating characteristics of QFs and cogenerators render the use of a specific standard unworkable, (2) that the Congressional language in the new section 210(n)(1)(A)(ii) of PURPA to ''[take] into account technological, efficiency, economic, and variable thermal energy requirements, as well as State laws applicable to sales of electric energy from a qualifying facility to its host facility'' clearly contemplates a case-by-case evaluation, (3) that any ''bright-line'' test will, by its nature, be prone to becoming outdated, (4) that the Commission does not currently have sufficient experience with the new ''fundamentally'' requirement to develop specific standards (although it may in the future), and (5) that the standards proposed by the utilities generally seem to be designed to discourage cogeneration. Some of these commenters also argue that that the Final Rule should provide additional detail on how the case-specific determination will be made, or that the Final Rule should include specific ''safe harbors'' that will decrease the risk and uncertainty associated with planning and constructing a cogeneration facility.

30. Many other commenters favor a specific, numerical standard, arguing (1) that a case-by-case evaluation will necessarily lead to large amounts of uncertainty and litigation, both for new cogeneration applicants and for utilities, (2) that Congress required the Commission to act through rulemaking to adopt new qualification standards in order to provide transparent criteria by which both new cogeneration QF applicants and utilities can know in advance the requirements of the statute and be assured that these requirements are being consistently interpreted and applied, and (3) that Congress specifically required revision to 18 CFR 292.205, which contains very specific mathematical formulae and numerical standards, implying their desire for some sort of objective standard.

31. Many of the same commenters who advocate a specific, numerical standard for the total energy output also argue that the operating standard should be significantly increased from the current five percent to ensure that any proposed new cogenerator is fully integrated with its host and that the output of the facility complies with the new ''fundamentally'' requirement. In particular, EEI and other utilities advocate increasing the operating standard to 20 percent, and Southern California Edison Company (SoCal Edison) advocates an increase to 60 percent. Some of these commenters cite claims made in public by cogeneration advocates as evidence that such significant increases in operating standards are achievable and appropriate. Others argue that an increase in the operating standard is not necessary to implement the ''fundamentally'' requirements. Some argue that the cogeneration advocates' public claims are not a sound basis for establishing a standard, and that, in any case, the utilities are misapplying these public claims. They point out that, since the Commission considers only half the thermal energy output in its calculations, that such comparisons between operating standards are not appropriate. Others argue that Congress could have required such an increase of the operating standard in the text of EPAct 2005, but specifically chose not to do so.

32. EEI and others point out that some commenters advocate taking essentially no action whatsoever in response to new section 210(n)(1)(A)(ii) of PURPA, and argue that this cannot be the intent of Congress. Instead, they argue, the structure of the language in the statute suggests that the entire output of a cogeneration facility is to be aggregated, and that by calculating the percentage of the facility's output used for industrial, commercial or institutional purposes, the Commission can determine whether the new ''fundamentally for'' test has been met. In particular, EEI recommends a two-part test: First, a minimum threshold of 67 percent of the

cogenerator's total energy output, over the course of 12 months; and second, if the facility will generate electricity on a continuous basis, the cogenerator should also demonstrate that the facility has not been ''oversized.'' Others argue that it has not been shown how a 67 percent ''total energy output operating standard'' follows from the ''fundamental'' use requirement, and that such a restrictive standard may eliminate certain applications that could otherwise meet the fundamental use criteria through other means. EEI responds by stating that the Commission could establish a case-by-case waiver process for unique technologies and industrial processes, where the applicant would have the opportunity to demonstrate that such a waiver is warranted. EEI also states that the notion of safe harbors is compatible with its recommendations, so long as such safe harbors are not absolute.

33. Other types of numeric tests are also advocated by various commenters. FICA recommends that any cogeneration facility, regardless of fuel use, owned or operated by and appurtenant to an industrial mining or manufacturing operation, where at least 25 percent of the electric energy or 25 percent of the thermal energy is consumed in such industrial operation, is in compliance with the ''fundamentally'' requirement. Cinergy proposes that, if the Commission decides to establish a numerical standard as urged by EEI and others, the standard be set at 25 percent.

34. Entergy argues that, in addition to demonstrating compliance with its proposed 67 percent standard, the Commission should require that cogeneration applicants, at a minimum, submit the following technical data as part of the certification process: (1) Average annual hourly useful electrical output in Btu/hr; (2) average annual hourly useful thermal output in Btu/hr; (3) average annual hourly useful mechanical output in Btu/hr; and (4) utilization of thermal, electrical and mechanical output along with the steam, electrical and mechanical usage diagrams for the facility. This data, Entergy argues, should be accompanied by an affidavit of a senior officer, attesting to the accuracy of the data.

35. As discussed in more detail below, some commenters urge the Commission to consider that it may often be legitimate for a cogeneration plant to have considerably more electric generation capacity than is needed for consumption by the thermal host, and the existence of such excess generation capacity does not indicate that such output is ''intended'' fundamentally for sale to an electric utility. Some commenters argue that EPAct 2005 and PURPA clearly recognize that QF facilities will often produce a steady stream of electricity for sale to third parties, as evidenced by the must-take and competitive market opportunities that Congress has required be available to QF's.

36. Entergy suggests that, as an alternative to the traditional certification of QF facilities on an ''all or nothing'' basis, the Commission should consider certifying as a QF only the portion of a new cogeneration facility that the applicant is able to demonstrate will meet the revised criteria for new qualifying facilities. Entergy suggests that only this portion of a QF's total capacity should be eligible for the benefits provided by PURPA, including the put rights traditionally afforded to QFs. Under Entergy's proposal, a generator selling any excess capacity above that capacity which meets the proposed ''fundamentally'' criteria for new qualifying facilities would have to be sold in the market like any other generator. Entergy believes this would encourage the sizing of QFs appropriately to the needs of the host, in the manner that PURPA intended.

37. Several commenters indicate that they agree with the Commission's statement in the NOPR that Congress intended in EPAct 2005 to discourage so-called PURPA machines, but go on to argue that PURPA machines came to exist as a direct result of specific avoided cost policies by certain states, and by the inability of independent power producers to interconnect to the grid without obtaining QF status. This Commission and state regulatory authorities have enacted policies such that conditions are now different, they argue, and thus significant changes to the Commission's regulations are not necessary. Others agree with the Commission's statement in the NOPR, but argue that the Commission must be precise in crafting its regulatory language so that QFs which bear absolutely no resemblance to PURPA machines are not inadvertently captured by the new rules.

38. Cinergy argues that no quantitative requirements for the total energy output that must be supplied to a thermal host should be established for cogeneration facilities where power from a facility will be sold at avoided costs rates that reflect market forces.

39. Delta Power, *et al.,* argue that the application of the new requirements should focus on whether a facility is built to supply a thermal product that would be generated or procured from another fuel-consuming source in the absence of cogeneration, and that facilities that meet this standard should be presumed to have satisfied the new requirements unless a challenger demonstrates otherwise.

40. USCHPA argues that no detailed analysis or explanation of the proposed outputs of the facility should be required unless utility sales on an ongoing basis are proposed. It argues that where the electricity output from a facility is less than the electricity required at the site of the facility, and there may be few or no occasions when power is exported onto the grid from that site, certification as a QF should be virtually automatic.

41. USCHPA also points out that facilities are increasingly being built to serve multi-family housing complexes, apartment buildings, public housing projects and other residential applications. They argue that, in the same manner as the Commission has appropriately added ''mechanical'' energy to the listed types of useful energy output Congress listed in EPAct, the Commission should add ''residential'' to the valid purposes for which a QF can intend its energy outputs other than sales of electricity to a utility.

42. Several commenters request clarification that thermal hosts are not necessarily required to use each of the enumerated electrical, thermal, chemical and mechanical outputs. Several other commenters request clarification that cogeneration facilities that utilize waste heat as their primary fuel (*i.e.,* bottoming cycle cogeneration facilities) are presumed to be in compliance with the new ''fundamentally'' requirements. The Independent Sellers request clarification that the technical requirements for new cogeneration facilities will apply only to those facilities that sell their electrical output at avoided cost pursuant to the mandatory purchase requirement.

43. Some utility commenters argue that Congress intended in EPAct 2005 to implement requirements that fundamentally change the nature of what kind of cogeneration plants can qualify for QF status, and that make such qualification much more difficult. Several other commenters point out that Congress has not eliminated the requirement for the Commission to issue rules which encourage the use of cogeneration, and argue that implementing the ''fundamentally'' requirement in a way that significantly increases the difficulty of obtaining QF status for a cogeneration plant frustrates the encouragement of cogeneration, and

so cannot have been the intent of Congress.

44. Several commenters argue that the comments of the utilities on the procedures for demonstrating compliance with the ''fundamentally'' rule demonstrate the need for procedures to protect QFs' confidential and commercially sensitive information, and that Entergy's proposal in particular is a thinly-veiled attempt to gain access to QFs' most commercially sensitive information, and goes far beyond what is needed to prevent sham transactions or curb PURPA abuses. These commenters argue that QFs cannot be required to hand over sensitive cost data to a utility and then be expected to engage in bilateral power purchase negotiations on a level playing field, and that the new § 292.205 should thus specify that the new cogeneration facilities will be able to obtain confidential treatment for commercially sensitive information submitted in support of their applications for certification and notices of self-certification. SoCal Edison states that it understands the QFs' desire to protect their business information and is willing to agree to an appropriate protective order or other procedure for protecting confidential QF information. However, SoCal Edison and others argue that potential challengers to a QF application need access to all information relevant to the application in order to evaluate whether the potential QF meets the criteria for QF status and to challenge the QF application, if appropriate.

45. The Council of Industrial Boiler Owners (CIBO) objects to the Commission's use of the word ''limited'' in the NOPR to describe its discretion to ''[take] into account technological, efficiency, economic, and variable thermal energy requirements, as well as State laws applicable to sales of electric energy from a qualifying facility to its host facility.'' [10] They argue that Congress did not specifically limit the Commission's discretion beyond its statutory terms and such a self-limitation should not be used by the Commission to avoid undertaking the searching inquiry necessary to meet Congress's goal of encouraging energy efficiency. Other commenters also argue that the Commission should be sure to take into account all of the criteria specified in section 210(n)(1)(A)(ii).

46. NCEMPA and APPA argue that small QF's (*e.g.,* those of five or fewer megawatts (MW)) should be categorically exempt from regulations aimed at implementing the ''fundamental'' use requirement. They argue that there is little valid or widespread concern that small QFs are constructed primarily for any purpose other than for commercial, industrial, or institutional use, and that the output of small QFs is not likely to cause price distortion in the energy markets.

3. Commission Determination

47. As an initial matter, we address certain requests for clarification. First, we agree that many residential uses of thermal output have long been considered legitimate for the purposes of cogeneration certification, and that ''residential purposes'' is subsumed within ''institutional purposes.'' We therefore find that residential purposes should be maintained as acceptable for the purpose of satisfying the requirements of section 210(n)(1)(a)(ii), and we will revise the regulatory text in § 292.205(d)(ii) to specifically reference residential purposes. We also clarify that new cogeneration facilities will not need to have each of the enumerated individual outputs (electrical, thermal, chemical and mechanical) used for industrial, commercial, residential or institutional purposes, so long as the cumulative safe harbor standard, as discussed below, is met, or other sufficient support for certification is provided.

48. We also agree with commenters who point out that the Commission's obligation to encourage cogeneration has not been eliminated. This obligation was established in section 210(a) of PURPA, which has not been repealed by EPAct 2005. As such, in implementing EPAct 2005, the Commission's goal is to interpret the requirements of new section 210(n)(1)(A)(ii) in light of the requirement to encourage cogeneration as reflected in the existing section 210(a).

49. Turning to the central issues regarding the ''fundamentally'' requirement, we find no statutory basis for the suggestions by some commenters that the Commission focus solely on the goal of eliminating so-called PURPA machines instead of implementing the specific requirements of section 210(n)(1)(A)(ii) for all new cogeneration facilities. The discussion of PURPA machines in the NOPR [11] was intended to provide context, and not to establish a policy objective that could replace the implementation of the specific requirements of section 210(n)(1)(A)(ii). We find that section 210(n)(1)(A)(ii) requires new cogeneration facilities seeking certification to make a showing that their energy output is used fundamentally for industrial, commercial, residential or institutional purposes and is not intended fundamentally for sale to an electric utility. In short, we will implement the requirements of section 210(n)(1)(A)(ii) as written.

50. Despite comments to the contrary, we continue to believe that a case-by-case approach to the implementation of section 210(n)(1)(A)(ii) best provides the flexibility required to appropriately address various facilities and circumstances. However, we agree that the adoption of a safe harbor will provide greater certainty to the industry, make the evaluation of applications by the Commission more manageable, and make the certification process more objective. Thus, we will establish a safe harbor, within which a facility will be presumed to comply with the requirements of section 210(n)(1)(A)(ii). Because, as discussed below, we will design the safe harbor to reflect the requirements of section 210(n)(1)(A)(ii), the presumption that facilities falling within the safe harbor comply with section 210(n)(1)(A)(ii) will be irrebuttable; the safe harbor will define those facilities which will automatically be deemed to comply with the requirements of section 210(n)(1)(A)(ii). However, as also discussed below, the Commission, in determining whether a new cogeneration facility's energy output is used fundamentally for industrial, commercial, residential or institutional purposes and is not intended fundamentally for sale to an electric utility, must also take ''into account technological, efficiency, economic, and variable thermal energy requirements, as well as State laws applicable to sales of electric energy from a qualifying facility to its host facility;'' a finding that one of those factors exists may warrant a finding that facilities that do not fall within the safe harbor nevertheless comply with section 210(n)(1)(A)(ii).

51. We agree with commenters who argue that the structure of the language in section 210(n)(1)(A)(ii) suggests that compliance of new cogeneration facilities with that section will generally depend on the percentage of the total, aggregated energy output that is used for industrial, commercial, residential or institutional purposes, and not sold to an electric utility. We, therefore, believe that a safe harbor should be similarly structured to capture the intent of the overall requirement. After careful consideration of various recommendations of commenters, we believe a standard of at least 50 percent is a reasonable interpretation of section 210(n)(1)(A)(ii) in light of the

[10] *See* NOPR at P 14.

[11] *Id.* at P 11.

Commission's continuing obligation under section 210(a) to encourage cogeneration. Thus, new cogeneration facilities seeking QF status, where the electrical output of the facility is intended to be sold pursuant to section 210,[12] will be required to include a demonstration that at least 50 percent of the aggregated annual energy output of the facility is to be used for industrial, commercial, residential or institutional purposes, and not sold to an electric utility, in order to qualify under the safe harbor provisions. New cogeneration facilities complying with the safe harbor provision will be required to comply with the safe harbor provision both for the 12-month period beginning with the date the facility first produces electric energy, and for any calendar year subsequent to the year in which the facility first produces electric energy. New cogeneration facilities that do not fall within the safe harbor provision should demonstrate in their applications the percentage of aggregated annual energy output that is used for industrial, commercial, residential or institutional purposes, along with discussion of and support for why the Commission should conclude that section 210(n)(1)(A)(ii) is nevertheless met ''taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as State laws applicable to sales of electric energy from a qualifying facility to its host facility.'' Unless a new cogeneration facility qualifies under the safe harbor provision, the information submitted by the applicant concerning the percentage of total energy that is to be used for industrial, commercial, residential or institutional purposes will establish the standard that that facility must comply with, both for the 12-month period beginning with the date the facility first produces electric energy, and for any calendar year subsequent to the year in which the facility first produces electric energy.

52. Entergy has argued that, as part of the process of demonstrating compliance with the ''fundamentally'' standard, the Commission should require that new cogeneration facilities, at a minimum, submit (1) average annual hourly useful electrical output in Btu/hr; (2) average annual hourly useful thermal output in Btu/hr; (3) average annual hourly useful mechanical output in Btu/hr; and (4) utilization of thermal, electrical and mechanical output along with the steam, electrical and mechanical usage diagrams for the facility. This data, Entergy argues, should be accompanied by an affidavit of a senior officer, attesting to the accuracy of the data. We note that the first four items are already required by Items 10 and 13 of Form 556.[13] With respect to the request to require applicants to submit an affidavit, we note that Form 556 already requires the applicant to submit with the filing the signature of an authorized individual evidencing accuracy and authenticity of information.[14] This system seems to be working, and in the absence of any demonstration that it has not worked or is not working, we find that Entergy's proposal is unnecessary.

53. Many parties commented on the legitimacy of a new cogeneration facility having ''excess capacity'' beyond that needed to provide for the electricity needs of the host facility. These parties present various situations and circumstances, which, they argue, justify ongoing sales of electricity from a new cogeneration facility to a utility, without violation of the requirements of section 210(n)(1)(A)(ii). In particular, commenters point out (1) that some thermal hosts may require redundant generation capacity and/or redundant thermal capacity to ensure the reliability of their process; (2) that long lead times and high costs associated with siting approvals and equipment orders often make it significantly more economic to construct a large increment of capacity at one time, rather than several smaller increments as needed over time; (3) that it is generally more cost-effective for an applicant to keep a cogeneration unit operating during periods of host shutdown or curtailment; (4) that the thermal energy requirements of some thermal hosts are so large relative to their electricity requirements that optimizing electricity production from that facility generates a continuous surplus of power that can only be exported; (5) that a new cogeneration facility may require its higher capital cost to be offset in the long term with an income stream based on electric sales to the grid; (6) that it may be advantageous or necessary to all concerned for a manufacturing company to export some of its power to a utility for a short time during periods of peak demand, generally during the summer cooling season and occasionally during the winter heating season; (7) that power plants are extremely capital intensive and the maximum economies of scale are found at the largest end of an original equipment manufacturer's product line, which also typically have the best combined cycle heat rates and lowest emission rates; and (8) that cogenerators must size their plants to be able to provide for the largest expected steam demand of the customer, but also must size the steam turbine to be able to take the excess steam created when the steam host reduces its steam needs. Some commenters also point out that certain states require that a cogeneration facility provide all of its output to the local utility, and that the local utility provide electricity to the industrial host, and that such requirements should not disqualify a new cogeneration facility from eligibility for QF status.

54. The above-listed circumstances represent circumstances where the Commission may possibly want to exercise its discretion and find that a new cogeneration facility complies with section 210(n)(1)(A)(ii), even when such facility does not fall within the safe harbor. There may, of course, be other circumstances that would also justify such treatment. In each particular case, the determination of whether a new cogeneration facility meets section 210(n)(1)(A)(ii) will depend upon the extent to which the applicant has sufficiently demonstrated that the facts and circumstances warrant certification under the new standard.

55. In response to the comments of CIBO, who objected to the Commission's use of the word ''limited'' in the NOPR to describe its discretion under section 210(n)(1)(A)(ii), we clarify that we did not intend to imply an aversion to the exercise of our discretion, where warranted, to certify certain facilities that do not comply with the safe harbor standard. Rather, we intended to indicate that such exercise of discretion will depend on the applicants making a sufficient showing to justify certification, and that the Commission will limit its exercise of discretion to consideration of the criteria enumerated by Congress in section 210(n)(1)(A)(ii). We also take this opportunity to clarify that we interpret our discretion to take into account technological and efficiency requirements as relating closely to our obligation under section 210(a) to encourage cogeneration and to the new provisions under section 210(n)(1)(A)(iii) requiring the Commission to ensure continuing progress in the development of efficient electric energy generating technology. Also, applicants that do not fall within the section 210(n)(1)(A)(ii) safe harbor may request the Commission to exercise its discretion to grant their application, ''taking into account technological, efficiency, economic and variable thermal energy requirements.'' The Commission will be more inclined to

[12] *See* Pub. L. 109–58, § 1253(a), 119 Stat. 595, 970 (2005) (adopting new section 210(n)(1)(B)).

[13] 18 CFR 131.80 (2005).

[14] 18 CFR 131.80, part A (2005).

make an affirmative section 210(n)(1)(A)(ii) finding for facilities employing modern, efficient technologies, both in order to encourage cogeneration under section 210(a) and to specifically encourage continuing progress in the development of efficient electric energy generating technology under section 210(n)(1)(A)(iii).

56. Several commenters have requested that the Commission limit the applicability of the ''fundamentally'' requirement to topping-cycle cogeneration facilities. While section 210(n)(1)(A)(ii), as a matter of law, applies to both new topping-cycle and new bottoming-cycle cogeneration facilities, we believe that many, if not most, bottoming-cycle cogeneration facilities will readily satisfy the requirements of section 210(n)(1)(A)(ii). The very nature of bottoming-cycle facilities is that they utilize waste heat from a thermal process to produce electric energy, as opposed to the consumption of a scarce fuel source. If the fuel utilized in a bottoming-cycle facility is merely enough to run the thermal process and has not been augmented for the purposes of power production, the facility clearly should satisfy the requirements of section 210(n)(1)(A)(ii) that the electrical, thermal, chemical and mechanical output of the facility is used fundamentally for industrial, commercial, residential or institutional purposes; in any event, such facilities may satisfy the requirements of section 210(n)(1)(A)(ii) by virtue of our discretion to make an affirmative finding after taking into account technological, efficiency, economic, and variable thermal requirements.

57. However, some bottoming-cycle facilities supplement the heat provided to the initial thermal process, with the intention of producing additional power from the resulting additional steam energy. We find that, as additional supplemental firing is added to bottoming cycles, the basis for giving them deference under section 210(n)(1)(A)(ii) is weakened. Therefore, in order for bottoming-cycle facilities to comply with section 210(n)(1)(A)(ii), applicants should demonstrate that the heat input is sized only for the thermal process, or explain to what extent supplemental firing is utilized. If there is supplemental firing, applicants should either comply with the safe harbor provision of the regulations, or explain the situation and justify why the Commission should exercise its discretion to make an affirmative section 210(n)(1)(A)(ii) finding.

58. We disagree with commenters who advocate a change to the Commission's existing operating standard. The language of section 210(n)(1)(A)(ii) does not in our view direct a change to the operating standard, and we do not believe that an increase in the operating standard is necessary at this time.

59. In response to Entergy's suggestion that the Commission consider certifying as a QF only that portion of a new cogeneration facility that the applicant is able to demonstrate will meet the revised criteria under section 210(n)(1)(A)(ii), the statute does not require this approach and it would be unduly cumbersome to administer.

60. Finally, in applying our new regulation implementing section 210(n)(1)(A)(ii) of PURPA, § 292.203(d)(2) of our regulations, we will apply a rebuttable presumption that new cogeneration facilities that are 5 MW or smaller satisfy the requirement that the electrical, thermal, chemical, and mechanical output of the cogeneration facility is used fundamentally for industrial, commercial, residential or institutional purposes. We will apply this presumption because it is our experience that such small cogeneration facilities are generally designed to meet their thermal host's needs.

61. Lastly, we note that some commenters have stated that there is a need for special procedures to protect QFs' confidential and commercially sensitive information. However, under § 388.112 of the Commission's regulations,[15] any person submitting a document to the Commission may request privileged treatment for some or all of its document. While the party requesting privileged treatment must support that claim, none of the material for which confidential treatment is requested will be disclosed unless pursuant to a confidentiality agreement, a protective order, or a finding that material does not warrant confidential treatment. Given these procedures that the Commission already has in place, we see no need to promulgate new procedures specifically for QF applications.

C. Continuing Progress in the Development of Efficient Electrical Energy Generating Technology and the Efficiency Standard for Coal-Fired Generation

1. Background

62. Section 210(a)(1)(A)(iii) of PURPA requires that all new cogeneration facilities seeking QF status demonstrate ''continuing progress in the development of efficient electric energy generating technology.'' The NOPR proposed that the Commission's regulations repeat the statutory language. In addition, the NOPR proposed to (1) retain the existing operating standard for all cogeneration facilities; (2) retain the existing efficiency standards for oil cogeneration facilities for which any of the energy input is natural gas or oil, but (3) apply an efficiency standard to new coal-burning cogeneration facilities.

2. Comments

63. EEI states that the Commission must update the efficiency standards in its regulations for new cogeneration facilities, and agrees with the addition of an efficiency standard for coal-fired generation. EEI argues that the efficiency standard should apply to all cogeneration fuel inputs. EEI recommends that the Commission revise the definitions in § 292.202(m) to use higher heating values instead of lower heating values. EEI also recommends that the Commission revise the definition in § 292.202(m) to take into account the total energy input of all fuels, including coal and waste fuels, not just oil and natural gas. EEI argues that facilities that utilize a renewable energy resource or waste fuel should be qualified as a small power producer and not as cogenerators. EEI states that the efficiency standards for cogeneration QFs, which have existed for 25 years, should be increased for new facilities to reflect modern, more efficient technology.

64. As an interim measure, EEI believes the 60 percent efficiency standard for new cogeneration facilities primarily fueled by natural gas is appropriate. Several comments offered support for EEI's comments, while others argued that a 60 percent efficiency standard is not achievable or that 60 percent is an arbitrary value that has no rational basis other than to reduce the number of QFs that are entitled to sell their power under PURPA. Commenters state that fixed, objective standards as advocated by EEI are too simplistic to be applied to the full range of facilities that could be designed and developed.

65. Although Indeck does not object to increased efficiency standards for new cogeneration QF plants, they must be reasonable, and based on clear and definite standards. NARUC states that the Commission should take care to encourage the use of better technology and not prevent the use of any improved technologies by setting the standards unreasonably high. Any standard the Commission adopts must recognize that

[15] 18 CFR 388.112 (2005).

the requirement of greater efficiency is a technological, not an environmental standard. USCHPA states that requiring QFs to implement a ''best available technology'' standard would result in fearsome costs and constraints. Primary Energy states the rule should embrace the philosophy that deployment of existing technology in innovative and creative ways defines continuing progress in achieving greater overall resource efficiency. The Cogeneration Association California states that requiring each applicant to demonstrate that it would contribute to this ''continuing progress'' standard might discourage the continued use of well-established technologies proven to produce efficiencies, but which may no longer be considered ''progressive.''

66. The EPA believes there is little, if any, need to alter existing PURPA criteria or processes. The EPA also believes that because combined heat and power (CHP) systems are inherently more efficient than the alternative (separate heat and power generation), they always improve total efficiency, reduce fossil fuel consumption, and therefore advance the objectives of EPAct 2005.

67. Other commenters concur with the Commission that an efficiency standard be applied to new coal-burning cogeneration facilities in a manner similar to that applied to natural gas and oil-burning cogeneration facilities. In light of the advances in generating technology, they argue that there is no policy basis to exempt new coal-burning cogeneration facilities from efficiency standards. Indeed, requiring compliance with efficiency standards will help speed the adoption of the latest and most efficient coal-burning technology. Yet other commenters argue that there is no reason to impose an efficiency standard on coal-burning QFs. Given the abundance of coal, market forces should regulate the efficiency of coal-fired QFs. Commenters state the imposition of a minimum efficiency standard on new coal-fired cogeneration facilities is inconsistent with the intent of PURPA, as amended. Commenters state that the Commission lacks record support for such a decision on an efficiency standard for coal-fired units, which is technical and would require significant analysis and each case must be evaluated individually.

3. Commission Determination

68. Section 210(n)(1)(A)(iii) of PURPA requires the Commission to issue rules to ensure ''continuing progress in the development of efficient electric energy generating technology.'' As an initial matter, upon review of the comments on this issue, the Commission now believes that the regulations it is issuing implementing sections 210(n)(1)(A)(i) and 210(n)(1)(A)(ii) of PURPA are sufficient by themselves to ensure ''continuing progress in the development of efficient energy generating technology'' through, for example, the application of efficiency standards and appropriate exemptions from certain regulatory requirements discussed herein. Accordingly, the Commission will not require that applicants for certification of new cogeneration facilities, provide a description of how a particular technology used by a particular applicant contributes to the continuing progress in the development of efficient energy generating technology. We will delete the requirement contained in the NOPR that applicants do so.

69. While some commenters support increasing the existing efficiency standards, and some commenters support the Commission's applying an efficiency standard to coal-fired cogeneration facilities for the first time, the Commission will retain the existing operating and efficiency standards for new oil and gas cogeneration facilities, and, will not impose new efficiency standards for new coal-burning cogeneration facilities at this time.[16]

70. We find persuasive the EPA comments that there is little, if any, need to alter existing PURPA criteria or processes. The EPA states that CHP (combined heat and power) remains one of the most significant opportunities to improve the efficiency and reduce the environmental impact of United States energy production and it is critical that this rulemaking advance, not constrain, these opportunities. The EPA further states that since CHP systems are inherently more efficient than the alternative (separate heat and power generation) they always improve total efficiency, reduce fossil fuel consumption, and therefore advance the objectives of EPAct 2005. We find the comments of Solar Turbines compelling as well. Solar Turbines, a manufacturer of generation equipment, states that, while its products have standard efficiencies greater than 60 percent, their PURPA efficiency is less than 50 percent. They are still much more efficient than conventional separate electric and thermal generation (49 percent conventional/34 percent PURPA efficiency), however. Solar Turbines states that the existing PURPA standard of 42.5 percent LHV/38.6 percent HHV is sufficient to ensure efficient CHP systems and still accommodate the wide range of technologies and applications. Therefore, the Commission will retain the existing operating and efficiency standards for new cogeneration facilities.[17]

71. Developers of cogeneration facilities, moreover, have an economic incentive to employ the efficient, modern technology giving due consideration to the costs of that technology. We see no reason at this time to impose higher efficiency standards on cogeneration facilities. As the EPA and others point out, CHP processes are inherently more efficient than producing electric energy and heat separately.

72. In sum, the increased efficiency that will result from our implementation of sections 210(n)(1)(A)(i) and 210(n)(1)(A)(ii) of PURPA satisfy the statutory requirement that the Commission ensure continuing progress in the development of efficient electric energy generating technology.

D. Self Certification

1. Background

73. In the NOPR, the Commission invited comments on whether the Commission's self-certification

[16] To the extent that commenters suggest that the Commission change its regulations containing criteria applicable to existing cogeneration facilities, those suggestions are inconsistent with section 210(n)(2) of PURPA, which states that the Commission does not have the authority to change the criteria for existing QFs:

''Notwithstanding rule revisions under paragraph (1), the Commission's criteria for qualifying cogeneration facilities in effect prior to the date on which the Commission issues the final rule required by paragraph (1) shall continue to apply to any cogeneration facility that—(A) Was a qualifying cogeneration facility on the date of enactment of subsection (m) [*i.e.*, August 8, 2005], or (B) had filed with the Commission a notice of self-certification, self-recertification or an application for Commission certification under 18 CFR 292.207 prior to the date on which the Commission issues the final rule required by paragraph (1) [*i.e.*, the date of issuance of this Final Rule].''

[17] Recently built cogeneration facilities have been dominated by natural gas fired technologies. Their construction has been driven by lower capital costs in comparison to coal facilities and the anticipation of moderately priced natural gas. A coal-fired facility, in contrast, typically will recover its more substantial investment over a longer period of time. While newer coal-fired generation technologies could offer greater fuel efficiency and better environmental performance than older designs, they also require greater capital investment. It is not the intent of the Commission to discourage more economic coal-fired generation technologies. Commenters also feel that applying an efficiency standard to coal-fired facilities is likely to impose additional barriers for cogeneration at coal-fired facilities, undercutting the underlying statutory directive to encourage cogeneration by hampering the flexibility of coal-fired cogeneration units to shutdown their facilities for repairs, or engage in other maintenance. Therefore, the Commission will impose no new efficiency standards for new coal-fired cogeneration facilities at this time.

procedures [18] should be available to new cogeneration facilities in light of the criteria proposed for certification of new cogeneration facilities as QFs.

2. Comments

74. Several commenters argue that self-certification can remain an option as long as clear standards are established, but that it is difficult to understand exactly how self-certification would work without such standards.

75. Some commenters argue that self-certification should remain an option for certain new cogeneration facilities. American Forest & Paper asserts that self-certification should remain available to new cogeneration facilities where there is (1) a traditional manufacturing use, (2) the facility fits into safe harbor provisions, and (3) employs a proven or innovative cogeneration technology. NCEMPA believes the self-certification procedures should remain available for small QFs (*e.g.*, 5 MWs or smaller) because the substantial burden associated with complying with new certification procedures may greatly discourage development of small QFs. The York County Solid Waste and Refuse Authority (York County) asserts self-certification should remain available to new cogeneration facilities except for those facilities owned largely or wholly by traditional utilities.

76. A few commenters contend that new cogeneration facilities should not be allowed to self-certify. Calpine Corporation (Calpine) believes that the case-by-case approach proposed by the Commission seems inconsistent with a self-certification option. NARUC speculates that self-certification will inevitably lead to the qualification of questionable facilities which undermines Congress's intent to foster responsible QF development.

77. Several commenters maintain that self-certification should remain an option despite the subjective nature of the new standards. The PGC Electricity Committee, Indeck, and Ridgewood state that the self-certification procedures are efficient, self-implementing, less time-consuming, and relatively inexpensive. Delta Power, *et al.*, assert that QFs have always been responsible for ensuring that they meet the requirements for QF status, regardless of how they achieve certification. They further state that owners of new cogeneration facilities should have the option to either self-certify or to apply for Commission certification, depending on their comfort level with the characteristics of their facilities.

3. Commission Determination

78. The Commission will retain the option to self-certify for new cogeneration facilities. NARUC and others fear that questionable cogeneration facilities will attain QF status through the self-certification process due to the subjective nature of the new standards unless the Commission establishes clear and objective standards. As Indeck and Ridgeway correctly note in their comments, however, the Commission has the authority to review and question a self-certification.

79. Nevertheless, we note that the Commission's currently effective regulations do not make explicit the Commission's authority to revoke the QF status of self-certified QFs absent the filing of a petition for declaratory order that the self-certified QF does not meet the applicable requirements for QF status.[19] Given that EPAct 2005 calls for greater Commission scrutiny of QF status, we will modify § 292.207(d)(1)(iii) of the Commission's regulations to provide that the Commission may on its own motion revoke the QF status of self-certified and self-recertified QFs.

80. In light of the new standards directed by Congress for new cogeneration facilities, we find it appropriate to now publish in the **Federal Register** notices of self-certifications and self-recertifications of new cogeneration facilities; currently, the Commission does not notice any self-certifications or self-recertifications in the **Federal Register**.[20] Publication of notices of self-certification and self-recertification of new cogeneration facilities will enhance the visibility of self-certifications for interested parties other than the host electric utility. Thus, we will require self-certifications and self-recertifications of new cogeneration facilities to include a form of notice of the self certification or self-recertification suitable for publication in the **Federal Register**. Accordingly, we will amend § 292.205(d) of the Commission's regulations to provide for publication of notice of self-certifications and self-recertifications of new cogeneration facilities.

81. Pursuant to § 292.207(a) of the Commission's regulations, ''[a] small power production facility or cogeneration facility that meets the applicable criteria established in § 292.203 is a qualifying facility.'' There is no express requirement in § 292.203 that a facility make a filing to satisfy the requirements for QF status. While the current Commission's regulations do state that an owner or operator of a self-certifying facility ''must'' file a ''notice of self-certification which contains a completed Form 556,'' [21] the Commission has interpreted this requirement as being for record keeping purposes, and not necessary for QF status.

82. The Commission, particularly in light of the criteria for new cogeneration facilities, does not believe that a facility should be able to claim QF status without having made any filing with this Commission. Accordingly, the Commission is amending section 292.203 to expressly require that a facility claiming QF status must file either a notice of self-certification or an application for Commission certification. Any existing QF that has never filed either a notice of self-certification or an application for Commission certification, must do so within sixty (60) days of the date this order is published in the **Federal Register**, to continue claiming QF status.

83. The original reasons that the Commission instituted the self-certification process are still valid. Among the reasons for the Commission's adoption of the self-certification process were that the complexity, delays, and uncertainties created by a case-by-case qualification procedure would act as an economic disincentive to owners of smaller facilities. The Commission also envisioned that the initiation of purchase and sale arrangements would require the flow of substantial information between the proposed QF and the purchasing utility so that the filing of substantial information with the Commission would be unnecessary. While many new cogeneration facilities may want the assurance that Commission certification, as opposed to self-certification, provides, we believe that the self-certification option should still be available to new cogeneration facilities. Moreover, the new requirement that a facility claiming certification file at least a notice of self-certification, the publication of notice of self-certifications and self-recertifications for new cogeneration facilities, and the modification of the Commission's regulations to make explicit that the Commission, on its own motion, can revoke the QF status of a self-certified QF, remove the danger that a questionable new cogeneration

[18] 18 CFR 292.207 (2005).

[19] 18 CFR 292.207(d)(1)(iii) (2005).

[20] 18 CFR 292.207(a)(1)(iv) (2005).

[21] 18 CFR 292.207(a)(1)(ii) (2005).

facility, in particular, will obtain and retain QF status.

E. Exemptions

1. Background

84. In the NOPR, the Commission noted that, in implementing section 210(e)(1) of PURPA, which provides that the Commission shall prescribe rules under which QFs are exempt in whole or in part, from the FPA, from PUHCA, from state laws respecting rates or respecting the financial or organization regulation of electric utilities, or from any combination of the foregoing, the Commission granted very broad exemptions from the FPA, PUHCA and state laws in order to remove the disincentive of utility-type regulation from QFs. The Commission stated that in the context of this rulemaking proceeding it found it appropriate to reexamine the broad exemptions from the FPA granted to QFs, partly because those broad exemptions may no longer be needed, and partly because the Commission through experience realized that the broad exemptions it granted QFs removed a large number of generation sales from *any* regulatory oversight. The Commission therefore proposed to eliminate the exemptions from sections 205 and 206 of the FPA that the Commission previously granted, except for the exemptions from sections 205 and 206 that are for sales that are governed by state regulatory authorities. In addition, the Commission proposed that QFs would not be exempt from new sections 220, 221 and 222 of the FPA that were added to the FPA by sections 1281 (Electric Market Transparency), 1282 (False Statements) and 1283 (Market Manipulation) of EPAct 2005.[22]

2. Comments

85. As a general matter, the QFs were opposed to lifting of the total exemption from sections 205 and 206 of the FPA in the current regulations. First, those opposed argue that in deciding to build the generating facility, the owners relied on the existence of the exemption. For example, the Electric Power Supply Association argues that FPA rate regulation of existing contracts will upset long-standing expectations and create unnecessary disruptive uncertainty regarding the financial integrity of numerous QFs. ARIPPA argues that the Commission's proposal amounts to a ''bait-and-switch'' on investors who were encouraged to build and operate renewable small power production facilities and cogeneration facilities. Occidental Chemical Corporation (Occidental) adds that the Commission's proposal creates incentives for utilities to challenge all existing QF contracts, which will result in litigation. They also argue that subjecting all non-PURPA sales to regulation under the FPA is unnecessary and would discourage the development of cogeneration.

86. Several QFs suggest that, in addition to exemptions being given to sales pursuant to a state PURPA program, QFs selling into an organized market under applicable market rules and tariff requirements should remain exempt from the FPA.

87. Most QFs supported the Commission's proposal to continue to exempt QFs smaller than five MW from the provisions of the FPA. Others suggested that the Commission raise the size of the QFs that would retain all exemptions to 20 or 30 MW. For example, PGC Electricity, ENEL North America and the Illinois Landfill Gas Coalition propose exemptions for projects having capacities of 20 MW or less. Cinergy and the American Wind Energy Association argue that facilities under 30 MW do not have a significant market effect and should remain exempt.

88. A number of QFs suggest that, rather than removing the exemptions for all non-PURPA sales, the Commission remove the exemptions only for those QFs with majority utility ownership. Other QFs, such as USCHPA and York County, suggest that QFs that are independent of traditional utilities be permitted to retain all of the existing exemptions from the FPA. Other commenters note that removing exemptions is not required by EPAct 2005. Commenters note that a blanket elimination of exemptions will remove the incentive to cogenerate for non-utility owned QFs.

89. Other commenters request that QFs remain exempt from definition of ''electric utility company'' under PUHCA 2005. For example, the American Chemistry Council states that this would provide an important incentive for the development of QFs by entities that otherwise are primarily engaged in business other than the generation and sale of electricity.

90. Utilities, on the other hand, generally support limiting the exemptions from the FPA. AEP, for example, argues that no QF should be exempt from the FPA, noting that QFs have the ability to participate in the economic dispatch process within an RTO. The California Electricity Oversight Board comments that the Commission should not exempt any QF electrical sales from its regulatory oversight unless it finds that either: (1) The energy sales from the QF are governed by a state regulatory authority, or (2) the QF is less than 5 MW and owned by individuals or small businesses that are unconnected to any electric utility, electric utility holding company, power marketer, transmission provider, transmission owner, or others in the electricity business. Entergy argues that QFs should be required to obtain market-based rate authority for all non-PURPA sales. NRECA comments that the Commission should no longer exempt QFs from the non-rate provisions of the FPA and should require QFs owned by public utilities to make rate filings under section 205 of the FPA for avoided cost sales and all QFs should make rate filings under section 205 of the FPA for non-PURPA sales. The Transmission Access Policy Study Group supports the elimination of sections 205 and 206 exemptions, except for sales governed by state regulatory authorities. Some of the utilities suggested that the Commission's current proposal which states that a QF that sells electric energy ''pursuant to a state regulatory authority avoided-cost ratemaking regime would remain exempt from section 205'' (unless it also makes sales of electric energy that are not pursuant to a state regulatory authority avoided-cost ratemaking regime) is not sufficiently clear. One commenter suggests the exemption be applied to ''sales * * * made pursuant to a state regulatory authority's implementation of PURPA.'' This, the commenter states, would more accurately limit the exemptions to ''PURPA sales.'' Others point out that bilateral contracts between a QF and a utility often satisfy the requirements of being pursuant to a state regulatory authority's implementation of PURPA.

91. Commenters also propose that the Commission should add section 203 to the list of sections with which QFs must comply. The Transmission Access Policy Study Group argues that the Commission should eliminate entirely the section 203 exemption. It states that the consumer protection concerns that led Congress to expand the Commission's section 203 authority over generation acquisitions are relevant to QF transfers as well.

3. Commission Determination

92. We will eliminate certain exemptions that were previously granted to QFs as proposed in the NOPR. However, we will clarify that QFs will retain the exemption from sections 205 and 206 of the FPA when a sale is made pursuant to a state

[22] Pub. L. 109–58, §§ 1281–83, 119 Stat. 594, 978–80 (2005).

regulatory authority's implementation of PURPA. The Final Rule will also essentially retain the pre-existing exemption from PUHCA so that a QF will not be considered ''an electric utility company'' under the new Public Utility Holding Company Act of 2005.[23]

93. Section 210(e)(1) of PURPA states that the Commission ''shall * * * prescribe rules under which [certain qualifying facilities] are exempted, in whole or in part, from the Federal Power Act, from the Public Utility Holding Company Act, from State laws and regulations respecting the rates, or respecting the financial or organization regulation, of electric utilities, or from any combination of the foregoing, if the Commission determines such exemption is necessary to encourage cogeneration and small power production.'' Section 210(e)(2) of PURPA provides that the Commission is not authorized to exempt small power production facilities of 30 to 80 MW capacity from these laws, except for geothermal power production facilities. Such facilities between 30 and 80 MW may be exempted from PUHCA and from state laws and regulations, but may not be exempted from the FPA. Thus section 210(e) requires the Commission's regulations to grant regulatory exemptions for certain QFs, in whole, or *in part*, and *if* necessary to encourage cogeneration and small power production.

94. In Order No. 69, the Commission first implemented section 210(e) of PURPA. The Commission stated that a broad exemption was then appropriate to remove the disincentive of utility-type regulation from QFs, including sections 203, 205, 206, 208, 301 and 304 of the FPA. In § 292.601 of its regulations, the Commission exempted QFs (other than non-geothermal small power production facilities between 30 and 80 MW) from sections 203, 205, 206, 208, 301 and 304 of the FPA.

95. When the Commission first granted the exemptions from sections 205 and 206 of the FPA in Order No. 69, there was no market for electric energy produced by non-utility generators. Indeed this was a primary reason that PURPA was enacted. The Commission wrote its regulations, including the provisions for exemptions from sections 205 and 206, with the expectation that all sales of electric energy from QFs would take place as a result of the section 210 of PURPA purchase obligation, and that they would take place pursuant to state regulatory authority implementation of the Commission's avoided-cost rules under PURPA. Thus, there was no expectation that QFs would make sales that, by virtue of the Commission's granting a broad exemption from sections 205 and 206 of the FPA, would be subject to neither this Commission's nor a state regulatory authority's oversight. However, largely as a result of PURPA, markets for electric energy produced by non-traditional power producers developed. And QFs participated in those markets and began to make sales that were not subject to either Commission or state regulatory authority oversight.

96. Therefore, in light of the significant changes that have occurred in the industry since the first QF facilities were introduced and in light of the changing electric markets and resulting market power issues that have arisen in recent years, we no longer believe that it continues to be necessary or appropriate to completely exempt QFs from sections 205 and 206 of the FPA. We conclude that such a complete exemption is not necessary to encourage the development of cogeneration and small power production facilities and, moreover, the broad nature of the exemptions currently set forth in § 292.601 removes a large number of electric energy sales from *any* regulatory oversight. Further we note that many QFs are large and their non-PURPA sales could potentially have a significant market effect.

97. We are not convinced by the comments that eliminating exemptions will cause undue uncertainty or upset the legitimate expectations of QF owners and lenders. The exemptions from regulation previously granted were always subject to revision and QFs had no justifiable expectation that, no matter the change in circumstances, changes in the regulatory regime would not occur. Further, our *partial* removal of the exemption from sections 205 and 206 of the FPA does not affect a facility's QF status under PURPA or the obligation of an electric utility to purchase power from the QF. However, we take note of the comments requesting that existing contracts not be subject to this change in our regulations and we will provide that sales that occur pursuant to existing contracts will continue to be exempt from sections 205 and 206 of the FPA.

98. As we also stated in the NOPR, we are aware that partial removal of exemptions might create a hardship for smaller QFs, particularly those owned by individuals or small businesses. The Commission stated that we would consider that at least some of the exemptions previously granted in § 292.601 should remain in effect for smaller QFs, such as those under five MW. Numerous commenters suggested that the Commission should consider larger facilities, such as 20 MW or 30 MW facilities, to be small facilities for purposes of retaining the exemptions from section 205 and 206 of the FPA. We agree, and modify our proposal so that the Final Rule provides that facilities 20 MW or smaller shall remain exempt from sections 205 and 206 of the FPA. However, when an existing contract for sales from a facility expires, sales from the facility, whether pursuant to a renewal of the existing contract or pursuant to a new contract, will be subject to sections 205 and 206, unless otherwise exempt.[24]

99. In the NOPR we also stated that a QF which sells electric energy pursuant to a state regulatory authority avoided-cost ratemaking regime would remain exempt from sections 205 and 206 of the FPA. In response to comments, we clarify the regulatory language to make clear that a QF will retain exemption from sections 205 and 206 of the FPA when its sales are pursuant to a state regulatory authority's implementation of PURPA (as opposed to the proposed regulations ''pursuant to a state regulatory authority avoided cost regime''). We believe that this is appropriate because ''avoided cost regime'' is not defined and could be interpreted to include state programs that are not grounded in PURPA. Moreover, many sales made pursuant to bilateral contracts between QFs and electric utilities (including contracts at market-based rates) are made pursuant to a state regulatory authority's implementation of PURPA. The change in language, providing exemptions for QF sales made pursuant to a state regulatory authority's implementation of PURPA, will ensure that such sales from QFs, even where they happen to be pursuant to a bilateral contract and at market-based rates, will continue to be exempt from sections 205 and 206 of the FPA.

100. EEI states that the elimination of the ownership requirements should not permit a qualifying facility to sell electric energy other than electric energy produced by itself or another qualifying facility and still retain QF status. EEI comments that paragraph 25 of the NOPR should be deleted and the Commission should maintain the ''net output rule.'' According to EEI, the net output rule requires a utility to purchase only a QF's net output production, *i.e.,*

[23] See Pub. L. 109–58, §§ 1261–77, 119 Stat. 594 972–78 (2005).

[24] As we discuss below, such sales may be otherwise exempt because they are from facilities 20 MW or smaller or because they are made pursuant to a state regulatory authority's implementation of PURPA.

the QF's total capacity minus the power the QF requires to operate its generating facility (often called station use or auxiliary load). EEI argues that if a QF's sales to a utility are not limited to its net output, then the QF in essence would be getting credit for more capacity than it is displacing on the utility's system. EEI states that QFs, whether or not they are majority-owned by utilities, should not be able to take advantage of PURPA to buy power from a utility at one price and sell it back to the utility at a higher price. EEI's comments are supported by NYSEG, Rochester, Progress Energy, SoCal Edison, PSNM, TNP, PG&E and Entergy Services, Inc.

101. We disagree with EEI that the elimination of the ownership requirement should be interpreted to preclude a QF from selling electric energy other than electric energy produced by itself or another QF without losing QF status. The loss of QF status in the past by a facility that sold non-QF power, such as power in excess of the net capacity of a facility, rested on the statutory and regulatory ownership requirements for QF status. Removal of the ownership prohibition removes the bar to a QF selling non-QF electric energy while retaining QF status. However, as we explained in the NOPR, any non-QF electric energy sold by a QF must be sold pursuant to the FPA. Before making sales of non-QF power, the QF must obtain authority pursuant to section 205 of the FPA to make such sales, if a QF has not already obtained such section 205 authority. To the extent that EEI and others are concerned that a QF will attempt to substitute lower-cost non-QF electric energy for the electric energy that utilities are purchasing pursuant to the purchase obligation of section 210 of PURPA, the Commission does not believe that such purchases are required by PURPA. What electric utilities are required to purchase is the ''electric energy from such facilities'' [25] which the Commission interprets to mean electric energy produced by the QF and not non-QF electric energy which the QF has purchased or has produced itself through a process that does not satisfy the technical requirements for QF status. Thus, for example, if a cogeneration QF decides to produce electric energy through non-sequential supplemental firing or a small power production QF decides to produce electric energy by burning a non-small power fuel, the electric energy would not be subject to the PURPA purchase obligation and the sales of such electric energy should not be exempt from sections 205 and 206 of the FPA. Similarly, purchase and re-sale of non-QF power produced by others would not be exempt from sections 205 and 206 of the FPA. Whether such purchases are otherwise required by an agreement between a utility and a QF is a separate matter of contract law, however.

102. In addition, we reject proposals to eliminate the QF exemption from the FPA section 203(a)(i) filing requirements. We are not persuaded such a change to our existing practice is called for. With respect to the NOPR proposal to eliminate the QF exemption from PUHCA, we have rethought this proposal in light of the Public Utility Holding Company Act of 2005. We interpret PURPA to permit us to exempt QFs from the Public Utility Holding Company Act of 2005 in § 292.602 of our regulations. Section 292.602 will thus provide that a QF shall not be considered an ''electric utility company'' as defined by the Public Utility Holding Company Act of 2005. However, consistent with our recent actions on FPA section 203, QFs will be considered an ''electric utility company'' for purposes of 203(a)(2) of the FPA.

103. Lastly, we see no reason to exempt QFs from the newly added FPA sections 220, 221 and 222, added by EPAct 2005 sections 1281 (Electric Market Transparency), 1282 (False Statements) and 1283 (Market Manipulation).

F. General Requirements for Qualification and Ownership Criteria

1. Background

104. Section 1253(b) of EPAct 2005 amended sections 3(17)(C) and 3(18)(B) of the FPA by eliminating the ownership limitations for QFs previously contained in those sections. Section 292.206 of the Commission's regulations was designed to implement the prior statutory requirement that a qualifying cogeneration or small power production facility must be owned by a person not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities). In the NOPR, the Commission proposed to implement section 1253(b) of EPAct 2005 by eliminating § 292.206 from its regulations, and thus eliminating the ownership limitations for all QFs—both existing and new.

105. Section 292.203 lists the general requirements for qualification status. Section 292.203(a)(3) requires that a small power production facility must ''[m]eet[] the ownership criteria specified in § 292.206.'' Section 292.203(b)(2) requires that a cogeneration facility must ''[m]eet[] the ownership criteria specified in § 292.206.'' In light of the elimination of the ownership limitations for all QFs and the Commission's proposal to delete § 292.206, in the NOPR the Commission also proposed to delete from § 292.203 these references to the ownership limitation from the requirements for qualifying small power production facilities and qualifying cogeneration facilities. Therefore, the Commission proposed to delete §§ 292.206, 292.203(a)(3) and 292.203(b)(2) from its regulations.

2. Comments

106. No commenter has opposed the ownership limitation from QFs and deletion of section 292.206 and revision of definitions of cogeneration and small power production facility in section 292.203 of the Commission's regulations.

3. Commission Determination

107. There is no opposition to the Commission's proposal in the NOPR. We will, therefore, implement section 1253(b) of EPAct 2005 by eliminating § 292.206 from our regulations, and thus eliminate the ownership limitations for all QFs—both existing and new. We will simultaneously delete §§ 292.203(a)(3) and 292.203(b)(2) from our regulations describing the general requirements for qualifying status.

G. Form 556

1. Background

108. In the NOPR, the Commission proposed changes in Form 556 for new qualifying cogeneration facilities. Form 556 is used by Applicants seeking qualifying facility status, whether by Commission application or by self-certification. The Commission's removal of § 292.206 prompted the amendment of Form 556 to reflect the new criteria for QF status. Specifically, the Commission proposed to eliminate references in Form 556 to the requirement that a QF may not be owned more than 50 percent by certain entities and also proposed to eliminate the requirements designed to help the Commission enforce that 50 percent ownership limitation. Nevertheless, the Commission also proposed to retain a requirement that a QF provide in Form 556 ownership information, including the percentage of ownership held by any electric utility or electric utility holding company, or by any person owned by either. While ownership limitations were no longer part of the criteria for QF

[25] 16 U.S.C. 824a–1(a)(2).

status, the Commission nevertheless believed that an applicant for QF status should inform the Commission of the identity of its owners, and their percentage interests. The Commission believed that this information would help the Commission determine in the future, as it gained experience subsequent to the enactment of EPAct 2005, whether the exemptions from the FPA and state laws should continue to be available to all QFs, especially those affiliated with traditional utilities, transmission providers and other power producers. It would also allow the Commission to better monitor for undue discrimination or preference both in the provision of transmission service and sales for resale in interstate commerce.

2. Comments

109. Several commenters supported the Commission's proposal to retain the facility ownership disclosure requirement in the Commission's Form No. 556. These commenters believe that such information will allow the Commission to better monitor potential discrimination in the provision of service to customers and would assist the Commission in reviewing the extent to which various QFs should continue to be exempt from state laws and various provisions of the FPA. However, Independent Sellers disagreed with the NOPR but maintained that the ownership disclosure should be limited to those owners that hold 10 percent or more of the equity interests in the QF.

3. Commission Determination

110. Upon consideration of comments, we conclude that we should still include an ownership disclosure requirement in the Commission's Form No. 556, as proposed in the NOPR. Contrary to Independent Sellers request to limit the ownership enquiry to 10%, the Commission would like to know *all* utility owners. This information will assist us in monitoring potential discrimination in the provision of service to customers and will assist the Commission in reviewing the extent to which various QFs should continue to be exempt from various provisions of the FPA and state laws.

H. Other Issues With Respect to Section 210(n)

1. Background

111. A number of commenters have asked the Commission to define what a ''new cogeneration facility'' is for purposes of EPAct 2005. Specifically, they want the Commission to clarify that an existing QF does not become subject to the requirements of newly added section 210(n) of PURPA when it files for recertification.

2. Comments

112. ELCON and many other commenters maintain that change in ownership or other modifications should not convert an ''existing facility'' to ''new facility'' on recertification. They request that the regulations clarify that the new standards apply only to ''new facilities,'' those being built and *first* certified after the EPAct 2005 effective date. They argue that the requirements of section 210(n) of PURPA should not apply to facilities that are requesting recertification.

113. SoCal Edison opposes ELCON's suggestion arguing that the Commission's revised regulation for ''new'' qualifying cogeneration facility should apply to a cogeneration facility that seeks recertification as a QF. It argues that an existing qualifying cogeneration facility substantially modified or altered in a way not covered by 18 CFR 292.207(a)(2)(i) and completing an extensive re-powering of the facility or converting from one technology to another should be subjected to the revised regulation for ''new'' qualifying cogeneration facilities.

114. Cinergy Solutions and EPSA seek clarification from the Commission that a QF facility designated as an old facility under the Commission's rules should not subsequently become a new facility because of non-compliance for a certain period or withdrawal of an application. EPSA requests that the Commission confirm that, notwithstanding future changes in the allocation of QF benefits, as a result of elimination of QF ownership criteria or otherwise, such future changes will have no retroactive effect on the QF status for periods prior to the effective date of the new rules.

3. Commission Determination

115. Initially, we note that the regulatory text adopted in § 292.207(d) defines what cogeneration facilities will be considered new cogeneration facilities. In addition, we clarify that there is a rebuttable presumption that an existing QF does not become a ''new cogeneration facility'' for purposes of the requirements of newly added section 210(n) of PURPA merely because it files for recertification. However, we caution that changes to an existing cogeneration facility could be so great (such as an increase in capacity from 50 MW to 350 MW) that what an applicant is claiming to be an existing facility should, in fact, be considered a ''new'' cogeneration facility at the same site.

IV. Information Collection Statement

116. The Office of Management and Budget (OMB) regulations require approval of certain information collection requirements imposed by agency rules.[26] Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

117. The Commission is amending its regulations to implement section 1253(a) of the EPAct 2005; specifically, its regulations governing qualifying small power production and cogeneration facilities. The Commission's regulations, in 18 CFR Parts 131 and 292, specify the certification procedures that must be followed by small power production and cogeneration facilities seeking QF status; specify the criteria that must be met; specify the information which must be submitted to the Commission in order to obtain QF status; specify the benefits which are available to QFs; and specify the transaction obligations of electric utilities with respect to QFs. The information provided to the Commission under Parts 131 and 292 is identified as Form 556. In addition, the Commission is amending its regulations providing exemptions to qualifying facilities; among other things, certain entities will be subject to the provisions of section 205 of the FPA and part 35 of the Commission's regulations. The information provided to the Commission under part 35 is identified as FERC–516.

The Commission is submitting these reporting requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act.[27] Comments were solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques. Comments were received noting that the NOPR only mentioned costs associated with filing a revised Form 556, and does not address the new applications and reports that will be required due to the elimination of certain exemptions from the FPA for

[26] 5 CFR 1320.13 (2005).

[27] 44 U.S.C. 3507(d) (2000).

QFs. Below we have revised the estimates provided in the NOPR to account for the elimination of exemptions.

Burden Estimate: The Public Reporting burden for the requirements proposed here are as follows:

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC Form 556	.....	.....	.....	.....
FERC Certification	27	1	4	108
Self-Certification	270	1	38	10,260
Subtotals	297	.....	.....	* 10,368
FERC–516	.....	.....	.....	.....
205 filings	100	1	183	18,300
Electric quarterly reports	[1] 100	1	230	23,000
	[2] 100	3	6	1,800
Change of status	100	1	3	300
Subtotals	100	.....	.....	43,400

* Off-setting changes to FERC–556; no change to current burden.
[1] Initial.
[2] Later.

Total Annual Hours for Collection: (Reporting + recordkeeping (if appropriate) = 43,400 hours (excludes the 10,368 hours for FERC–556).

Information Collection Costs: Costs for FERC–516 = $15,190,000 (43,400 hours @ $350 an hour). Costs for FERC–556 = $3,591,000 (10,260 hours at $350 an hour) + $37,800 (108 hours @ $350 an hour = $3,628,800. (The hourly rate includes attorney fees, engineering consultation fees and administrative support.)

Title: FERC Form 556 ''Cogeneration and Small Power Production''.

Action: Proposed Collections.

OMB Control No.: 1902–0075.

Respondents: Business or other for profit.

Frequency of Responses: On occasion.

Necessity of the Information: This Final Rule adopts the Congressional mandate found in section 1253(a) of EPAct 2005 to implement the establishment of criteria for new qualifying cogeneration facilities; and the elimination of ownership limitations. By amending its regulations, the Commission is satisfying the statutory mandate and also satisfying its continuing obligation to review its policies encouraging cogeneration and small power production, energy conservation, efficient use of facilities and resources by electric utilities and equitable rates for energy customers. The information collected under 18 CFR Parts 131 and 292 is used by the Commission to determine whether an application for certification (Commission certification or self-certification) meets the criteria for a qualifying small power production facility or a qualifying cogeneration facility under its regulations and eligible to receive the benefits available to it under PURPA. The information collected under 18 CFR part 35 is used by the Commission to carry out its statutory responsibility to assure that electric rates are just and reasonable. Sufficient detail must be obtained for the Commission to make informed decisions concerning appropriate cost and rate levels and to aid customers and other parties who may wish to challenge costs and rates. A public utility must obtain Commission authorization for all rates and charges for wholesale sales and transmission of electric energy in interstate commerce. The Commission is authorized to investigate the rates charged by public utilities for such sales and transmission. If, after investigation, the Commission determines that the rates are unjust and unreasonable or unduly discriminatory or preferential, the Commission is authorized to determine and prescribe the just and reasonable rates.

Internal review: The Commission has reviewed the requirements pertaining to qualifying small power production and cogeneration facilities and determined the proposed requirements are necessary to meet the statutory provisions of EPAct 2005, PURPA and the FPA.

These requirements conform to the Commission's plan for efficient information collection, communication and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, Phone: (202) 502–8415, fax: (202) 273–0873, e-mail: *michael.miller@ferc.gov.*

V. Environmental Analysis

118. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[28] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. As explained above, this Final Rule interprets amendments made to PURPA by EPAct 2005, and clarifies the applicability of these amendments to QFs; it does not substantially change the effect of the legislation. Accordingly, no environmental consideration is necessary.[29]

VI. Regulatory Flexibility Act Analysis

119. The Regulatory Flexibility Act of 1980 (RFA) [30] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. In the NOPR, we stated that many, if not most, QFs to which this rule would apply do not fall within the definition of small entities, citing the RFA's definition that a small entity is ''a business that is independently owned and not dominant in its field of operation.'' [31] The Non-Utility QF Group, however, argues that the Commission's proposals will impact small entities. It argues that it is likely

[28] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987) FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[29] 18 CFR 380.4(a)(2)(ii) (2005).

[30] 5 U.S.C. 601–12 (2000).

[31] 15 U.S.C. 632 (2000).

that a majority of QFs are owned in whole, or at least up to 50 percent, by small entities. It argues that under Small Business Administration (SBA) standards, an electric production firm is considered ''small'' if its output does not exceed 4 million MWh per year. It also argues that the forms and applications that will be required due to the modification of exemptions, including section 203 applications, section 205 tariffs, electronic quarterly reports and triennial market power reports, will cause a significant impact on a substantial number of small entities.

120. First, we note that certain rules are exempt from the RFA's requirements; exempt rules include interpretive rules, general statements of policy, or rules of agency organization procedure and practice. Interpretive rules ''generally interpret the intent expressed by Congress, where an agency does not insert its own judgments or interpretations in interpreting a rule and simply regurgitates statutory language.'' This Final Rule to a large extent is an interpretive rule; Congress directed the Commission in section 1253 of EPAct to revise our regulations governing new cogeneration facilities, and we have responded by following our statutory mandate.

121. Moreover, many QFs, although certainly not all, would not be considered ''small,'' even under the SBA's standards. Also, while there will be QFs that are small and that will be affected by the Final Rule, we also have included numerous provisions in the Final Rule designed to reduce the Final Rule's impact on such small entities. First, in response to commenters, the Final Rule provides that facilities 20 MW or smaller shall remain exempt from sections 205 and 206 of the Federal Power Act (this is an increase from five MW or smaller as proposed in the NOPR). The Final Rule further provides that sales that occur pursuant to existing contracts will continue to be exempt from section 205 of the FPA. In addition, the Final Rule also provides a rebuttable presumption that new cogeneration facilities that are 5 MW or smaller satisfy both the requirement that the thermal output of a new cogeneration facility is used in a productive and beneficial manner and the requirement that the electrical, thermal, chemical, and mechanical output of a new cogeneration facility is used fundamentally for industrial, commercial, residential or institutional purposes. The Final Rule also provides that a qualifying facility shall retain its exemption from sections 205 and 206 of the Federal Power Act when its power sales are made pursuant to a state regulatory authority's implementation of PURPA. This will mean that many QF power sales will continue to be exempt from sections 205 and 206 of the Federal Power Act.

122. The Final Rule also interprets PURPA to permit the Commission to exempt QFs from the newly enacted Public Utility Holding Company Act of 2005, and, accordingly, exempts QFs from that statute. In addition, to the extent the proposed regulations remove now-unnecessary regulations such as ownership limitations for qualifying cogeneration and small power production facilities, the proposed regulations will be beneficial to QFs.

VII. Document Availability

123. In addition to publishing the full text of this document in the **Federal Register,** the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426

124. From the Commission's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

125. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact FERC Online Support at 1–866–208–3676 (toll free) or (202) 502–8222 (e-mail at *FERCOnlinesupport@ferc.gov*), or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659 (E-Mail the Public Reference Room at *public.referenceroom@ferc.gov*).

VIII. Effective Date

126. These regulations are effective March 17, 2006.

The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in Section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 131 and 292

Electric power, Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission amends parts 131 and 292, chapter I, title 18, Code of Federal Regulations, as follows:

PART 131—FORMS

■ 1. The authority citation for part 131 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. In § 131.80, part A1a. through 1c. is revised part C.15, and a new undesignated center heading For New Congeneration Facilities immediately before part C.15 are added to read as follows:

§ 131.80 FERC Form No. 556, Certification of qualifying facility status for an existing or a proposed small power production or cogeneration facility.

* * * * *

Part A—General Information To Be Submitted by All Applicants

1a. Full name:

Docket Number assigned to the immediately preceding submittal filed with the Commission in connection with the instant facility, if any: QF __–__–__

Purpose of instant filing (self-certification or self-recertification [Section 292.207(a)(1)], or application for Commission certification or recertification [Sections 292.207(b) and (d)(2)]):

1b. Full address of applicant:

1c. Indicate the owner(s) of the facility (including the percentage of ownership held by any electric utility or electric utility holding company, or by any persons owned by either) and the operator of the facility. Additionally, state whether or not any of the non-electric utility owners or their upstream owners are engaged in the generation or sale of electric power, or have any ownership or operating interest in any electric facilities other than qualifying facilities. In order to facilitate review of the application, the applicant may also provide an ownership chart identifying the upstream ownership of the facility. Such chart should indicate ownership percentages where appropriate.

* * * * *

Part C—Description of the Cogeneration Facility

* * * * *

For New Cogeneration Facilities

15. For any cogeneration facility that was either not certified as a qualifying cogeneration facility on or before August 8, 2005, or that had not filed a notice of self-certification, self-recertification or an application for Commission certification under § 292.207 of this chapter prior to February 2, 2006, also show:

(i) The thermal energy output of the cogeneration facility is used in a productive and beneficial manner; and

(ii) The electrical, thermal, chemical and mechanical output of the cogeneration facility is used fundamentally for industrial, commercial, residential or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a qualifying facility to its host facility.

PART 292—REGULATIONS UNDER SECTIONS 201 AND 210 OF THE PUBLIC UTILTY REGULATORY POLICIES ACT OF 1978 WITH REGARD TO SMALL POWER PRODUCTION AND COGENERATION

■ 3. The authority citation for part 292 continues to read as follows:

Authority: 16 U.S.C. 791a–825r; 2601–2645, 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 4. In § 292.203, paragraphs (a) and (b) are revised to read as follows:

§ 292.203 General requirements for qualification.

(a) *Small power production facilities.* Except as provided in paragraph (c) of this section, a small power production facility is a qualifying facility if it:

(1) Meets the maximum size criteria specified in § 292.204(a);

(2) Meets the fuel use criteria specified in § 292.204(b); and

(3) Has filed with the Commission a notice of self-certification, pursuant to § 292.207(a); or has filed with the Commission an application for Commission certification, pursuant to § 292.207(b)(1), that has been granted.

(b) *Cogeneration facilities.* A cogeneration facility, including any diesel and dual-fuel cogeneration facility, is a qualifying facility if it:

(1) Meets any applicable operating and efficiency standards specified in § 292.205(a) and (b); and

(2) Has filed with the Commission a notice of self-certification, pursuant to § 292.207(a); or has filed with the Commission an application for Commission certification, pursuant to § 292.207(b)(1), that has been granted.

* * * * *

■ 5. In § 292.205, paragraph (d) is added to read as follows:

§ 292.205 Criteria for qualifying cogeneration facilities.

* * * * *

(d) *Criteria for new cogeneration facilities.* Notwithstanding paragraphs (a) and (b) of this section, any cogeneration facility that was either not certified as a qualifying cogeneration facility on or before August 8, 2005, or that had not filed a notice of self-certification, self-recertification or an application for Commission certification or Commission recertification as a qualifying cogeneration facility under § 292.207 of this chapter prior to February 2, 2006, and which is seeking to sell electric energy pursuant to section 210 of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 824a–1, must also show:

(1) The thermal energy output of the cogeneration facility is used in a productive and beneficial manner; and

(2) The electrical, thermal, chemical and mechanical output of the cogeneration facility is used fundamentally for industrial, commercial, residential or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a qualifying facility to its host facility.

(3) Fundamental use test. For the purposes of satisfying paragraph (d)(2) of this section, the electrical, thermal, chemical and mechanical output of the cogeneration facility will be considered used fundamentally for industrial, commercial, or institutional purposes and not intended fundamentally for sale to an electric utility if at least 50 percent of the aggregate of such output, on an annual basis, is used for industrial, commercial, residential or institutional purposes. In addition, applicants for facilities that do not meet this safe harbor standard may present evidence to the Commission that the facilities should nevertheless be certified given state laws applicable to sales of electric energy or unique technological, efficiency, economic, and variable thermal energy requirements.

(4) For purposes of paragraphs (d)(1) and (d)(2) of this section, a new cogeneration facility of 5 MW or smaller will be presumed to satisfy the requirements of those paragraphs.

(5) For purposes of paragraph (d)(1) of this section, where a thermal host existed prior to the development of a new cogeneration facility whose thermal output will supplant the thermal source previously in use by the thermal host, the thermal output of such new cogeneration facility will be presumed to satisfy the requirements of paragraph (d)(1).

■ 6. Section 292.206 is removed.

■ 7. In § 292.207, paragraphs (a)(1)(iv), and (d)(1)(iii) are revised to read as follows:

§ 292.207 Procedures for obtaining qualifying status.

* * * * *

(a) * * *

(1) * * *

(iv) Notices of self-certification or self-recertification, other than for new cogeneration facilities, will not be published in the **Federal Register**. Notices of self-certification or self-recertification of new cogeneration facilities will be published in the **Federal Register**; such self-certifications and self-recertifications should include a form of notice suitable for publication in the **Federal Register**.

* * * * *

(d) * * *

(1) * * *

(iii) The Commission may, on its own motion or on the motion of any person, revoke the qualifying status of a self-certified or self-recertified qualifying facility if it finds that the self-certified or self-recertified qualifying facility does not meet the applicable requirements for qualifying facilities.

* * * * *

■ 8. In § 292.601, paragraph (c) is revised to read as follows:

§ 292.601 Exemption of qualifying facilities from the Federal Power Act.

* * * * *

(c) *General rule.* Any qualifying facility described in paragraph (a) of this section shall be exempt from all sections of the Federal Power Act, except:

(1) Sections 205 and 206; however, sales of energy or capacity made by qualifying facilities 20 MW or smaller, or made pursuant to a contract executed on or before March 17, 2006 or made pursuant to a state regulatory authority's implementation of section 210 the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 824a–1, shall be exempt from scrutiny under sections 205 and 206;

(2) Section 1–18, and 21–30;

(3) Sections 202(c), 210, 211, 212, 213, 214, 220, 221 and 222;

(4) Sections 305(c); and

(5) Any necessary enforcement provision of part III of the Federal Power Act (including but not limited to sections 306, 307, 308, 309, 314, 315, 316 and 316A) with regard to the sections listed in paragraphs (c)(1), (2), (3) and (4) of this section.

■ 9. In § 292.602, paragraphs (b) and (c) are revised to read as follows:

§ 292.602 Exemption of qualifying facilities from certain State law and regulation.

* * * * *

(b) *Exemption from the Public Utility Holding Company Act of 2005.* A qualifying facility described in paragraph (a) of this section or a utility geothermal small power production facility shall not be considered to be an ''electric utility company'' as defined in section 1262(5) of the Public Utility Holding Company Act of 2005, 42 U.S.C. 16451(5).

(c) *Exemption from certain State laws and regulations.*

(1) Any qualifying facility shall be exempted (except as provided in paragraph (b)(2)) of this section from State laws or regulations respecting:

(i) The rates of electric utilities; and

(ii) The financial and organizational regulation of electric utilities.

(2) A qualifying facility may not be exempted from State laws and regulations implementing subpart C.

(3) Upon request of a state regulatory authority or nonregulated electric utility, the Commission may consider a limitation on the exemptions specified in paragraph (b)(1) of this section.

(4) Upon request of any person, the Commission may determine whether a qualifying facility is exempt from a particular State law or regulation.

Note: The following Appendix will not be published in the Code of Federal Regulations.

Appendix: List of Petitioners Requesting Clarification or Submitting Comments

American Chemistry Council
American Electric Power Service Corporation jointly with AEP Texas North Company, AEP Texas Central Company, Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, and Wheeling Power Company (collectively, AEP)
American Forest & Paper Association (American Forest & Paper)
American Public Power Association (APPA)
American Wind Energy Association (AWEA)
ARIPPA
California Electricity Oversight Board (CEOB)
Calpine Corporation (Calpine)
CE Generation, LLC (CE Generation)
Cinergy Solutions, Inc. (Cinergy)
Cogeneration Association California jointly with Energy Producers and Users Coalition, Cogeneration Coalition of Washington, and Nevada Independent Energy Coalition (collectively, QF Parties)
Cogentrix Energy, inc. (Cogentrix) jointly with Goldman Sachs Group, Inc. (Goldman Sachs) (collectively, Independent Sellers)
Constellation Energy Group, Inc. (Constellation)
Council of Industrial Boiler Owners (CIBO)
Delta Power Company, LLC (Delta Power) jointly with Juniper Generation, LLC (Juniper), and California Cogeneration Council (California Cogen)
Department of Housing and Urban Development
Dow Chemical Company (Dow)
Edison Electric Institute (EEI)
Edison Mission Energy jointly with Edison Mission Marketing & Trading, Inc., Midwest Generation EME, LLC (collectively, Edison Mission Energy) (intervention only)
Electric Power Supply Association (EPSA)
Electricity Consumers Resource Council (ELCON) jointly with American Iron and Steel Institute (AISI) (collectively, Industrial Consumers)
Enel North America, Inc. (Enel)
Entergy Services, Inc. jointly with Entergy Arkansas, Inc.; Entergy Gulf States, Inc.; Entergy Louisiana, Inc.; Entergy Mississippi, Inc.; and Entergy New Orleans, Inc. (collectively, Entergy)
Environmental Protection Agency
The Fertilizer Institute (Fertilizer Institute)
Florida Industrial Cogeneration Association (Florida Industrial Cogeneration)
GE Energy Financial Services (GE)
Granite State Hydropower Association, Inc. (Granite State Hydropower)
Illinois Landfill Gas Coalition (Illinois Landfill Gas)
Indeck Energy Services, Inc. (Indeck)
Kentucky Public Service Commission (Kentucky Commission)
Marina Energy, LLC (Marina Energy)
National Association of Regulatory Utility Commissioners (NARUC)
National Rural Electric Cooperative Association (NRECA)
New York State Electric & Gas Corporation (NYSEG) jointly with Rochester Gas and Electric Corporation (Rochester G&E)
Non-Utility QF Group
North Carolina Eastern Municipal Power Agency (NCEMPA)
Occidental Chemical Corporation (Occidental)
Oklahoma Corporation Commission (Oklahoma Commission)
Oklahoma Gas and Electric Company (OG&E)
Pacific Gas and Electric Company (PG&E)
Primary Energy Ventures LLC (Primary Energy)
Process Gas Consumers Group Electricity Committee (Electricity Committee)
Progress Energy, Inc. (Progress Energy)
Public Service Company of New Mexico (PSNM) jointly with Texas-New Mexico Power Company (TNP)
Public Service Electric and Gas Company jointly with PSEG Power LLC, PSEG Energy Resources & Trade LLC, and PSEG Global L.L.C. (collectively, PSEG)
Public Utility Commission of Ohio (Ohio Commission)
Ridgewood Renewable Power, LLC (Ridgewood)
Solar Turbines Incorporated (Solar Turbines)
Southern California Edison Company (SoCal Edison)
Transmission Access Policy Study Group (TAPS)
U.S. Combined Heat and Power Association (USCHPA)
U.S. Environmental Protection Agency (EPA)
Xcel Energy Services Inc. (Xcel)
York County Solid Waste and Refuse Authority (York County)

[FR Doc. 06–1194 Filed 2–14–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR 870

[Docket No. 2005N–0506]

Medical Devices; Cardiovascular Devices; Classification of Implantable Intra-Aneurysm Pressure Measurement System

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the implantable intra-aneurysm pressure measurement system into class II (special controls). The special control that will apply to the device is the guidance document entitled ''Class II Special Controls Guidance Document: Implantable Intra-Aneurysm Pressure Measurement System.'' The agency is classifying the device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a guidance document that will serve as the special control for the device.

DATES: This rule is effective March 17, 2006.

FOR FURTHER INFORMATION CONTACT: Nelson Anderson, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8282, ext. 171.

SUPPLEMENTARY INFORMATION:

I. What Is the Background of This Rulemaking?

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of the premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of FDA regulations.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification (section 513(f)(2) of the act).

In accordance with section 513(f)(1) of the act, FDA issued an order on August 4, 2005, classifying the CardioMEMS EndoSensor System into class III, because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device which was subsequently reclassified into class I or class II. On August 9, 2005, CardioMEMS, Inc., submitted a petition requesting classification of the CardioMEMS EndoSensor System under section 513(f)(2) of the act. The manufacturer recommended that the device be classified into class II.

In accordance with 513(f)(2) of the act, FDA reviewed the petition in order to classify the device under the criteria for classification set forth in 513 (a)(1) of the act. Devices are to be classified into class II if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the petition, FDA determined that the CardioMEMS EndoSensor System can be classified into class II with the establishment of special controls. FDA believes these special controls will provide reasonable assurance of the safety and effectiveness of the device type.

The device type is assigned the generic name Implantable Intra-Aneurysm Pressure Measurement System, and it is identified as a device intended to measure the intra-sac pressure in a vascular aneurysm. The device consists of a pressure transducer that is implanted into the aneurysm and a monitor that reads the pressure from the transducer.

FDA has identified the following risks to health associated specifically with this type of device: (1) Adverse tissue reaction, (2) the migration of implanted sensor, (3) inaccurate sensor information, (3) failure of implanted sensor, (4) failure of delivery system, (5) failure of electronic monitor, (6) electromagnetic interference, (7) electrical hazards, (8) magnetic resonance imaging incompatibility, (9) ultrasound incompatibility, (10) external defibrillation incompatibility, and (11) failure to detect and/or diagnose an endoleak that requires intervention.

FDA believes that the class II special controls guidance document entitled, ''Implantable Intra-Aneurysm Pressure Measurement System'' will aid in mitigating the potential risks to health by providing recommendations on biocompatibility testing, bench testing, software validation, electromagnetic compatibility testing, electrical safety testing, sterility of the device, magnetic resonance imaging compatibility, labeling, ultrasound compatibility, defibrillator compatibility, animal testing, and clinical testing. The guidance document also provides information on how to meet premarket (510(k)) submission requirements for the device. FDA believes that the special controls guidance document, in addition to general controls, addresses the risks to health identified previously and provides reasonable assurance of the safety and effectiveness of the device. Therefore, on October 28, 2005, FDA issued an order to the petitioner classifying the device into class II. FDA is codifying this classification by adding § 870.2855 to its classification regulations.

Following the effective date of this final classification rule, any firm submitting a 510(k) premarket notification for an implantable intra-aneurysm pressure measurement system will need to address the issues covered in the special controls guidance. However, the firm need only show that its device meets the recommendations of the guidance, or in some other way provides equivalent assurances of safety and effectiveness.

Section 510(m) of the act provides that FDA may exempt a class II device from the premarket notification requirement under 510(k) of the act if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device and, therefore, the type of device is not exempt from premarket notification requirements. Persons who intend to market this type of device must submit to FDA a premarket notification, prior to marketing the device, which contains information about the implantable intra-aneurysm pressure measurement system they intend to market.

II. What Is the Environmental Impact of This Rule?

The agency has determined under 21 CFR 25.34(b) that this action is of type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. What Is the Economic Impact of This Rule?

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is not a significant regulatory action as defined by the Executive order and so it is not

subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because classification of this device in class II will relieve manufacturers of the device of the cost of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by lowering their costs, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.''

The current threshold after adjustment for inflation is $115 million, using the most current (2003) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

IV. Does This Rule Have Federalism Implications?

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

V. How Does This Rule Comply With the Paperwork Reduction Act of 1995?

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520) is not required.

FDA also concludes that the special controls guidance document does not contain new information collection provisions that are subject to review and clearance by OMB under the PRA.

VI. What References are on Display?

The following reference has been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Petition from CardioMEMS, Inc., dated August 9, 2005.

List of Subjects in 21 CFR Part 870

Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 870 is amended as follows:

PART 870—CARDIOVASCULAR DEVICES

■ 1. The authority citation for 21 CFR part 870 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 870.2855 is added to subpart C to read as follows:

§ 870.2855 Implantable Intra-aneurysm Pressure Measurement System.

(a) *Identification.* Implantable intra-aneurysm pressure measurement system is a device used to measure the intra-sac pressure in a vascular aneurysm. The device consists of a pressure transducer that is implanted into the aneurysm and a monitor that reads the pressure from the transducer.

(b) *Classification.* Class II (special controls). The special control is FDA's guidance document entitled ''Class II Special Controls Guidance Document: Implantable Intra-Aneurysm Pressure Measurement System.'' See § 870.1 (e) for the availability of this guidance document.

Dated: February 6, 2006.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 06–1417 Filed 2–14–06; 8:45 am]

BILLING CODE 4160–01–S

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in March 2006. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: Effective March 1, 2006.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users should call the Federal relay service by dialing 711 and ask for 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022).

This amendment (1) adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during March 2006, (2) adds to Appendix B to Part 4022 the

interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during March 2006, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during March 2006.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 5.70 percent for the first 20 years following the valuation date and 4.75 percent thereafter. These interest assumptions represent an increase (from those in effect for February 2006) of 0.10 percent for the first 20 years following the valuation date and are otherwise unchanged. These interest assumptions reflect the PBGC's recently updated mortality assumptions, which are effective for terminations on or after January 1, 2006. See the PBGC's final rule published December 2, 2005 (70 FR 72205), which is available at *http://www.pbgc.gov/docs/05–23554.pdf.* Because the updated mortality assumptions reflect improvements in mortality, these interest assumptions are higher than they would have been using the old mortality assumptions.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 2.75 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent no change from those in effect for February 2006.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during March 2006, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 149, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
149	3–1–06	4–1–06	2.75	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 149, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
149	3–1–06	4–1–06	2.75	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry for March 2006, as set forth below, is added to the table.

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * *	*		*	*		*
March 2006	.0570	1–20	.0475	>20	N/A	N/A

Issued in Washington, DC, on this 8th day of February 2006.

Vincent K. Snowbarger,

Deputy Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 06–1375 Filed 2–14–06; 8:45 am]

BILLING CODE 7709–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1802

RIN: 2700–AD21

Change in Definition of Head of the Contracting Activity

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This final rule amends the NASA FAR Supplement (NFS) by revising the definition for ''Head of the contracting activity (HCA).''

DATES: *Effective Date:* February 15, 2006.

FOR FURTHER INFORMATION CONTACT: Sheryl Goddard, NASA, Office of Procurement, Program Operations Division; (703) 553–2519; e-mail: *Sheryl.Goddard@nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

This final rule revises the definition of ''Head of the contracting activity (HCA)'' in NFS 1802.101 to designate the Associate Administrator for the Space Operations Mission Directorate (SOMD) as head of the contracting activity for SOMD contracts. Previously, the center director of the NASA installation cognizant for award of an SOMD contract was the designated HCA. This administrative change is consistent with the roles and responsibilities of NASA officials.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this final rule. This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comment is not required. However, NASA will consider comments from small entities concerning the affected NFS part 1802 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.*, in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 1802

Government Procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

■ Accordingly, 48 CFR part 1802 is amended as follows:

PART 1802—DEFINITIONS OF WORDS AND TERMS

■ 1. The authority citation for 48 CFR part 1802 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

■ 2. Amend section 1802.101 by revising the definition of ''Head of the contracting activity (HCA)'' to read as follows:

1802.101 Definitions.

* * * * *

Head of the contracting activity (HCA) means, for field installations, the Director or other head, and for NASA Headquarters, the Assistant Administrator for Management Systems. For Space Operations Mission Directorate (SOMD) contracts, the HCA is the Associate Administrator for SOMD in lieu of the field Center Director(s). For Exploration Systems Mission Directorate (ESMD) contracts, the HCA is the Associate Administrator for ESMD in lieu of the field Center Director(s). For NASA Shared Services Center (NSSC) contracts, the HCA is the Executive Director of the NSSC in lieu of the field Center Director(s).

* * * * *

[FR Doc. 06–1430 Filed 2–14–06; 8:45 am]

BILLING CODE 7510–01–P

Proposed Rules

Federal Register
Vol. 71, No. 31
Wednesday, February 15, 2006

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23886; Directorate Identifier 2005–NM–255–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 900EX Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Dassault Model Falcon 900EX airplanes. This proposed AD would require inspecting the number 2 engine left- and right-hand forward mounts for missing rivets and installing rivets if necessary. This proposed AD results from reports of two missing rivets in the front section of the central engine mast discovered on airplanes in service and in production. We are proposing this AD to detect and correct missing rivets in the front section of the central engine mast, which could result in reduced structural integrity of the central engine mast, possible separation of the engine from the airplane during flight, and consequent loss of control of the airplane.

DATES: We must receive comments on this proposed AD by March 17, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–23886; Directorate Identifier 2005–NM–255–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Dassault Model Falcon 900EX airplanes. The DGAC advises that it has received reports of two missing rivets in the front section of the central engine mast discovered on airplanes in service and in production. This condition, if not corrected, could result in reduced structural integrity of the central engine mast, possible separation of the engine from the airplane during flight, and consequent loss of control of the airplane.

Relevant Service Information

Dassault has issued Service Bulletin F900EX–220, Revision 1, dated July 29, 2005. The service bulletin describes procedures for inspecting the number 2 engine left- and right-hand forward mounts for missing rivets and installing new rivets if there are missing rivets. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive F–2005–066, dated April 27, 2005, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are

certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Clarification of Inspection Type

Neither the French airworthiness directive nor the service bulletin defines the type of inspection that should be done for missing rivets. We have determined that the procedures in the service bulletin should be described as a ''general visual inspection.'' Note 2 has been included in this AD to define this type of inspection.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection for missing rivets	2	$65	$130	81	$10,530

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Dassault Aviation: Docket No. FAA–2006–23886; Directorate Identifier 2005–NM–255–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by March 17, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dassault Model Falcon 900EX airplanes, certificated in any category, having serial numbers 1 through 137 inclusive.

Unsafe Condition

(d) This AD results from reports of two missing rivets in the front section of the central engine mast discovered on airplanes in service and in production. We are issuing this AD to detect and correct missing rivets in the front section of the central engine mast, which could result in reduced structural integrity of the central engine mast, possible separation of the engine from the airplane during flight, and consequent loss of control of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Service Bulletin References

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Dassault Service Bulletin F900EX–220, Revision 1, dated July 29, 2005. Although the service bulletin referenced in this AD specifies to submit information to the manufacturer, this AD does not include such a requirement.

Inspection for and Installation of Missing Rivets

(g) Prior to accumulating 7,500 total flight hours, or within 6 months after the effective date of this AD, whichever is later: Do a general visual inspection of the number 2 engine left- and right-hand forward mounts for missing rivets, in accordance with the service bulletin. If any rivet is missing, before further flight, install the new rivet, in accordance with the service bulletin.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Inspections and Installations According to Previous Issue of Service Bulletin

(h) Inspecting for and installing rivets is also acceptable for compliance with the requirements of paragraph (g) of this AD if done before the effective date of this AD in accordance with the Accomplishment Instructions of Dassault Service Bulletin F900EX–220, dated April 14, 2004.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(j) French airworthiness directive F–2005–066, dated April 27, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on February 6, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–2175 Filed 2–14–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23890; Directorate Identifier 2005–NM–229–AD]

RIN 2120–AA64

Airworthiness Directives; Goodrich Evacuation Systems Approved Under Technical Standard Order (TSO) TSO–C69b and Installed on Airbus Model A330–200 and –300 Series Airplanes; Model A340–200 and –300 Series Airplanes; and Model A340–541 and –642 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Goodrich Evacuation Systems approved under TSO–C69b and installed on certain Airbus Model A330–200 and –300 series airplanes; Model A340–200 and –300 series airplanes; and Model A340–541 and –642 airplanes. This proposed AD would require inspecting to determine the part number of the pressure relief valves on the affected Goodrich evacuation systems, and corrective action if necessary. This proposed AD results from a report indicating that, during maintenance testing, the pressure relief valves on the affected Goodrich evacuation systems did not seal when activated, which caused the pressure in the escape slide/raft to drop below the minimum allowable raft mode pressure. We are proposing this AD to prevent loss of pressure in the escape slides/rafts after an emergency evacuation, which could result in inadequate buoyancy to support the raft's passenger capacity during ditching, and increase the chance for injury to raft passengers.

DATES: We must receive comments on this proposed AD by March 17, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Goodrich, Aircraft Interior Products, ATTN: Technical Publications, 3414 South Fifth Street, Phoenix, AZ 85040, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Tracy Ton, Aerospace Engineer, Cabin Safety/Mechanical and Environmental Systems Branch, ANM–150L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5352; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–23890; Directorate Identifier 2005–NM–229–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

We have received a report indicating that an unsafe condition may exist on certain Airbus Model A330–200 and –300 series airplanes; Model A340–200 and –300 series airplanes; and Model A340–541 and –642 airplanes; equipped with certain Goodrich evacuation systems. During maintenance testing, the pressure relief valves of the affected Goodrich evacuation systems did not seal when activated, which caused the pressure in the slide/raft to drop below the minimum allowable operating pressure. The affected Goodrich evacuation systems have certain part numbers (P/Ns) and are approved under Technical Standard Order (TSO) TSO–C69b. A review of service data indicates that there have been similar problems with pressure relief valves on multiple transport category airplane models. Loss of pressure in the escape slides/rafts after an emergency evacuation could result in inadequate buoyancy to support the raft's passenger capacity during ditching, and increase the chance for injury to raft passengers.

Relevant Service Information

We have reviewed Goodrich Service Bulletin 25–355, dated July 25, 2005. The service bulletin describes procedures for inspecting to determine the P/N of the pressure relief valves on affected Goodrich evacuation systems, and corrective actions if necessary. The service bulletin also describes

procedures for permanently marking the service bulletin number on the girt adjacent to the system identification placard to indicate compliance with the bulletin. The corrective action involves replacing any affected pressure relief valve on the affected evacuation system with a new valve. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between This Proposed AD and the Service Bulletin.''

Difference Between This Proposed AD and the Service Bulletin

Although the service bulletin recommends accomplishing the inspection ''at the next scheduled shop visit of the unit,'' we have determined that this imprecise compliance time might not address the identified unsafe condition soon enough to ensure an adequate level of safety for the affected fleet. In developing an appropriate compliance time for this AD, we considered the manufacturer's recommendation, the degree of urgency associated with the subject unsafe condition, and the average utilization of the affected fleet. In light of all of these factors, we find that a compliance time of 36 months for the inspection represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

Costs of Compliance

This proposed AD would affect about 27 airplanes of U.S. registry. The proposed actions would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $1,755, or $65 per airplane

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2006–23890; Directorate Identifier 2005–NM–229–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by March 17, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Goodrich Evacuation Systems Approved Under Technical Standard Order (TSO) TSO–C69b and having any part number identified in Goodrich Service Bulletin 25–355, dated July 25, 2005, as installed on Airbus Model A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes; Model A340–211, –212, –213, –311, –312, and –313 airplanes; and Model A340–541 and –642 airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from a report indicating that, during maintenance testing, the pressure relief valves of certain Goodrich evacuation systems did not seal when activated, which allowed the pressure in the slide/raft to drop below the minimum allowable raft mode pressure. We are issuing this AD to prevent loss of pressure in the escape slides/rafts after an emergency evacuation, which could result in inadequate buoyancy to support the raft's passenger capacity during ditching, and increase the chance for injury to raft passengers.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection

(f) Within 36 months after the effective date of this AD: Perform an inspection to determine the part number (P/N) of the pressure relief valve on the Goodrich evacuation systems in accordance with the Accomplishment Instructions of Goodrich Service Bulletin 25–355, dated July 25, 2005.

(1) If any pressure relief valve having P/N 4A3791–3 is installed, before further flight, replace the valve with a new or serviceable valve having P/N 4A3641–1 and mark the girt adjacent to the placard, in accordance with the Accomplishment Instructions of the service bulletin.

(2) If any pressure release valve having P/N 4A3641–1 is installed, before further flight, mark the girt adjacent to the placard in accordance with the Accomplishment Instructions of the service bulletin.

Part Installation

(g) As of the effective date of this AD, no person may install a pressure relief valve having P/N 4A3791–3, on any airplane equipped with Goodrich evacuation systems identified in Goodrich Service Bulletin 25–355, dated July 25, 2005.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(i) None.

Issued in Renton, Washington, on February 7, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–2173 Filed 2–14–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23889; Directorate Identifier 2005–NM–252–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318–111 Airplanes; A319–100 Series Airplanes; A320–111 Airplanes; A320–200 Series Airplanes; and A321–100 and –200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus transport category airplanes. This proposed AD would require inspecting to determine the part number of the twin motor actuators, and related investigative and corrective actions if necessary. This proposed AD results from a report of a low pressure valve of the twin motor actuator found partially open, although the valve detection system indicated that the valve was closed. Investigation revealed that the locating pin in the actuator was too short to engage with the valve slot, resulting in incorrect alignment of the actuator and the drive assembly, causing the valve to remain partially open. We are proposing this AD to ensure that, in the event of an engine fire, the valve actuator functions properly to delay or block the fuel flow to the engine and prevent an uncontrollable fire.

DATES: We must receive comments on this proposed AD by March 17, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–23889; Directorate Identifier 2005–NM–252–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Airbus transport category airplanes. The DGAC advises that it received a report of a low pressure valve of the twin motor actuator found partially open, although the valve detection system indicated that the valve was closed. Investigation revealed that the locating pin in the actuator was too short to engage with the valve slot, resulting in incorrect alignment. The cause of the defective locating pin was erroneous manufacturing tolerances. In the event of an engine fire, proper functioning of the valve actuator will delay or block the fuel flow to the engine and prevent an uncontrollable fire.

Relevant Service Information

Airbus has issued Service Bulletin A320–28–1122, including Appendix 01, dated November 19, 2004. The service bulletin describes procedures for inspecting to determine the part number of the twin motor actuators, and related investigative and corrective actions if necessary. If there is no affected actuator, the service bulletin specifies that no further action is required. If there is any affected actuator, the service bulletin specifies that operators should do the related investigative action of inspecting the locating pin of the valve of the twin-motor actuator for damage or misalignment, and accomplish all necessary corrective actions. The corrective action includes replacing any defective pin and repairing any damage to the actuator or drive assembly to ensure correct alignment can be attained. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the

service information and issued French airworthiness directive F–2005–189, dated November 23, 2005, to ensure the continued airworthiness of these airplanes in France.

The Airbus service bulletin refers to FR–HITEMP Service Bulletin HTE190001–28–003, dated March 30, 2004, as an additional source of service information for determining the part number of the twin motor actuators and accomplishing any related investigative and corrective actions.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the Airbus service information described previously.

Clarification of Inspection Language

The French airworthiness directive and the service bulletin request that operators ''inspect'' the twin motor actuators to determine the part number. This proposed AD defines that inspection as a ''general visual inspection.'' This inspection is defined in Note 1 of this proposed AD.

Costs of Compliance

This proposed AD would affect about 719 airplanes of U.S. registry. The proposed inspection would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $46,735, or $65 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2006–23889; Directorate Identifier 2005–NM–252–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by March 17, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A318–111; A319–111, –112, –113, –114, –115, –131, –132, and –133; A320–111, –211, –212, –214, –231, –232, and –233; and A321–111, –112, –131, –211 and –231 airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from a report of a low pressure valve of the twin motor actuator found partially open, although the valve detection system indicated that the valve was closed. Investigation revealed that the locating pin in the actuator was too short to engage with the valve slot, resulting in incorrect alignment of the actuator and the drive assembly, causing the valve to remain partially open. We are issuing this AD to ensure that, in the event of an engine fire, the valve actuator functions properly to delay or block the fuel flow to the engine and prevent an uncontrollable fire.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection

(f) Within 6,000 flight hours or 24 months after the effective date of this AD, whichever is first: Accomplish a one-time general visual inspection to determine the part number (P/N) of the twin motor actuators in accordance with Airbus Service Bulletin A320–28–1122, including Appendix 01, dated November 19, 2004.

(1) For airplanes having any actuator with P/N FRH010041 or P/N FRH010034, no further action is required by this paragraph.

(2) For airplanes having any actuator with P/N HTE190001–2, where the actuator serial number is not identified in Appendix 01 of the service bulletin, no further action is required by this paragraph.

(3) For airplanes having any actuator with P/N HTE190001, HTE190001–1, or HTE190001–2, where the actuator serial number is identified in Appendix 01 of the service bulletin, do all applicable related investigative and corrective actions before further flight, in accordance with the service bulletin.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands,

ladders, or platforms may be required to gain proximity to the area being checked.''

Note 2: Airbus Service Bulletin A320–28–1122, dated November 19, 2004, refers to FR–HITEMP Service Bulletin HTE190001–28–003, dated March 30, 2004, as an additional source of service information for determining the part number of the twin motor actuators and accomplishing any related investigative and corrective actions.

Parts Installation

(g) As of the effective date of this AD: No person may install an actuator with P/N HTE190001, HTE190001–1, or HTE190001–2, and a serial number identified in Appendix 01 of Airbus Service Bulletin A320–28–1122, dated November 19, 2004, on any airplane unless all applicable related investigative and corrective actions have been done in accordance with the requirements of paragraph (f)(3) of this AD.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(i) French airworthiness directive F–2005–189, dated November 23, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on February 6, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–2172 Filed 2–14–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23850; Directorate Identifier 2005–NM–126–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–10–10F and MD–10–30F Airplanes and Model MD–11 and MD–11F Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain McDonnell Douglas Model MD–11 series airplanes. The existing AD currently requires a revision of the airplane flight manual (AFM) to alert the flightcrew that both flight management computers (FMC) must be installed and operational. The existing AD also requires an inspection to determine the serial number of the FMCs; and follow-on corrective actions, if necessary, which terminate the AFM revision. The existing AD also requires an inspection to verify if a certain modification is on the identification plates of the FMCs; and applicable follow-on and corrective actions. This proposed AD would require installation of upgraded flight management computer software, which would terminate the existing AD. This proposed AD would also add airplanes to the applicability, including adding Model MD–10–10F and MD–10–30F airplanes. This proposed AD results from a report that the FMC does not acknowledge the pre-set glareshield control panel (GCP) altitude when profile (PROF) mode is engaged in descent mode. We are proposing this AD to prevent the un-commanded descent of an airplane below the selected level-off altitude, which could result in an unacceptable reduction in the separation between the airplane and nearby air traffic or terrain.

DATES: We must receive comments on this proposed AD by April 3, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2006–23850; Directorate Identifier 2005–NM–126–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or visit *http://dms.dot.gov*.

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

On October 15, 2001, we issued AD 2001–21–05, amendment 39–12476 (66 FR 53335, October 22, 2001), for certain McDonnell Douglas Model MD–11 series airplanes. That AD requires a revision of the airplane flight manual (AFM) to alert the flightcrew that both flight management computers (FMC) must be installed and operational. That AD also requires an inspection to

determine the serial number of the FMCs; and follow-on corrective actions, if necessary, which terminate the AFM revision. That AD also requires an inspection to verify if a certain modification is on the identification plates of the FMCs; and applicable follow-on and corrective actions. That AD resulted from a report indicating that, due to incorrect multiplexers that were installed in the FMC's during production, certain data busses failed simultaneously during a ground test. We issued that AD to prevent loss of airspeed and altitude indications on both primary flight displays in the cockpit, and/or loss or degradation of the autopilot functionality, and consequent failure of the data busses.

Actions Since Existing AD Was Issued

Since we issued AD 2001–21–05, we have received a report that an operator has discovered an anomaly during a descent phase of flight where the FMC does not acknowledge the pre-set glareshield control panel (GCP) altitude when profile (PROF) mode is engaged in descent mode. As a result of the anomaly, the airplane may deviate below the selected level-off altitude. This condition, if not corrected, could result in an unacceptable reduction in the separation between the airplane and nearby air traffic or terrain.

Relevant Service Information

We have reviewed Boeing Service Bulletin MD11–34–068, Revision 3, dated April 6, 2004 (for Model MD–11 and MD–11F airplanes). The service bulletin describes procedures for installing hardware and software to upgrade the flight management computer from P/N 4059050–912 to P/N 4059050–920. The service bulletin refers to Honeywell Service Bulletin 4059050–34–0010, dated March 19, 2003, as an additional source of service information for doing the actions.

We have reviewed Boeing Service Bulletin MD11–34–129, dated September 22, 2004 (for Model MD–11 and MD–11F airplanes). The service bulletin describes procedures for installing new software in the main avionics rack and reidentifying FMC–1 and FMC–2 to P/N 4059050–921. The service bulletin refers to Honeywell Alert Service Bulletin 4059050–34–A6023, dated September 22, 2004, as an additional source of service information for doing the actions.

We have reviewed Boeing Service Bulletin MD11–34–130, dated March 16, 2005 (for Model MD–11 and MD–11F airplanes). The service bulletin describes procedures for installing new software in the main avionics rack and reidentifying FMCs to P/N 4059050–913. The service bulletin refers to Honeywell Alert Service Bulletin 4059050–34–A6024, dated March 9, 2005, as an additional source of service information for doing the actions.

We have reviewed Boeing Service Bulletin MD10–31–053, Revision 1, dated June 14, 2005 (for Model MD–10–10F and MD–10–30F airplanes). The service bulletin describes procedures for installing new software in the main avionics rack and reidentifying the versatile integrated avionics (VIA) digital computer as P/N 4081580–903. The service bulletin refers to Honeywell Alert Service Bulletin 4081580–31–A6002, dated January 14, 2005, as an additional source of service information for doing the actions.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

Other Relevant Rulemaking

We have previously issued AD 2004–18–04, amendment 39–13782 (69 FR 53794, September 3, 2004) (A correction of the rule was published in the **Federal Register** on September 21, 2004 (69 FR 56480). That AD applies to all McDonnell Douglas MD–10–10F, MD–10–30F, MD–11, MD–11F, and 717–200 airplanes, and requires revising the Limitations section of the AFM to prohibit the use of the flight management system PROF mode for descent and/or approach operations unless certain conditions are met. Doing the applicable software/hardware upgrades that would be required by paragraphs (j) and (k) of this proposed AD are approved as an alternative method of compliance for the actions required by AD 2004–18–04.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2001–21–05. This proposed AD would retain the requirements of AD 2001–21–05 and would require accomplishing the actions specified in the service information described previously, which would terminate the requirements of the existing AD. This proposed AD also expands the applicability to include all Model MD–11 and MD–11F airplanes and certain Model MD–10–10F and MD–10–30F airplanes.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

Explanation of Change to Applicability

We have revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Change to Existing AD

This proposed AD would retain all requirements of AD 2001–21–05. Since AD 2001–21–05 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2001–21–05	Corresponding requirement in this proposed AD
Paragraph (a)	Paragraph (f).
Paragraph (b)	Paragraph (g).
Paragraph (c)	Paragraph (h).
Paragraph (d)	Paragraph (i).

Clarification of Paragraph Reference

Paragraph (d) of AD 2001–21–05 references ''the inspection required by paragraph (a) of this AD.'' However, there is no inspection in paragraph (a) of AD 2001–21–05; the inspection is specified in paragraph (b) of AD 2001–21–05. We have the revised paragraph (i) of this proposed AD (specified as paragraph (d) of AD 2001–25–05) to reference ''the inspection required by paragraph (g) of this AD'' (specified as paragraph (b) of AD 2001–25–05).

Costs of Compliance

There are about 230 airplanes of the affected design in the worldwide fleet and about 117 U.S.-registered airplanes. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. The average labor rate per hour is $65.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
AFM Revision, Inspections and Software Installation (required by AD 2001–21–05)	2	$0	$130	59	$7,670
Upgrade Software/Hardware (new proposed action)	2	0	130	117	15,210

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–12476 (66 FR 53335, October 22, 2001) and adding the following new airworthiness directive (AD):

McDonnell Douglas: Docket No. FAA–2006–23850; Directorate Identifier 2005–NM–126–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by April 3, 2006.

Affected ADs

(b) This AD supersedes AD 2001–21–05.

Applicability

(c) This AD applies to McDonnell Douglas airplanes, as specified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Model MD–10–10F and MD–10–30F airplanes, as identified in Boeing Service Bulletin MD10–31–053, Revision 1, dated June 14, 2005.

(2) All Model MD–11 and MD–11F airplanes.

Unsafe Condition

(d) This AD results from a report that the flight management computer (FMC) does not acknowledge the pre-set glareshield control panel (GCP) altitude when profile (PROF) mode is engaged in descent mode. We are issuing this AD to prevent the uncommanded descent of an airplane below the selected level-off altitude, which could result in an unacceptable reduction in the separation between the airplane and nearby air traffic or terrain.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Requirements of AD 2001–21–05

Airplane Flight Manual (AFM) Revision

(f) For MD–11 and MD–11F airplanes having manufacturer's fuselage numbers 0447 through 0552 inclusive, and 0554 through 0621 inclusive: Within 5 days after May 20, 1998 (the effective date of AD 98–10–01, amendment 39–10512), revise Section 1, page 5–1, of the Limitations Section of the FAA-approved AFM to include the following statement. This may be accomplished by inserting a copy of this AD into the AFM.

''Prior to dispatch of the airplane, both Flight Management Computer 1 (FMC–1) and FMC–2 must be installed and operational.''

Inspection

(g) For MD–11 and MD–11F airplanes having manufacturer's fuselage numbers 0447 through 0552 inclusive, and 0554 through 0621 inclusive: Within 90 days after November 26, 2001 (the effective date of AD 2001–21–05), do an inspection to verify that modification ''AS'' is on the front and rear identification plates of FMC–1 and FMC–2, per McDonnell Douglas Service Bulletin MD11–34–085, Revision 01, dated September 20, 1999. After the inspection has been done, the AFM revision required by paragraph (f) of this AD may be removed from the AFM.

Condition 1 (Modification ''AS'' Is Installed)

(h) If modification ''AS'' is found installed during the inspection required by paragraph (g) of this AD, before further flight, do the actions specified in paragraphs (h)(1) and (h)(2) of this AD, per McDonnell Douglas Service Bulletin MD11–34–085, Revision 01, dated September 20, 1999.

(1) Do a test of the FMCs in the flight compartment to ensure that modification ''AS'' is operational, and do applicable corrective actions, if necessary. Both FMCs must have modification ''AS'' installed and pass the test before loading new software per paragraph (h)(2) of this AD.

(2) Install new software and reidentify FMC–1 and FMC–2 as part number (P/N) 4059050–912.

Note 1: McDonnell Douglas Service Bulletin MD11–34–085, Revision 01, dated September 20, 1999, references Honeywell Service Bulletin 4059050–34–6020, Revision 1, dated April 30, 1999, as an additional source of service information for the

installation and reidentification requirements of paragraphs (h)(2) and (i)(2) of this AD.

Condition 2 (Modification ''AS'' Is Not Installed)

(i) If modification ''AS'' is NOT found installed during the inspection required by paragraph (g) of this AD, before further flight, do the actions specified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD, per McDonnell Douglas Service Bulletin MD11–34–085, Revision 01, dated September 20, 1999.

(1) Remove FMC–1 and FMC–2.

(2) Install modification ''AS'' and new software, and reidentify FMC–1 and FMC–2 as P/N 4059050–912.

(3) Install modified and reidentified FMC–1 and FMC–2.

New Requirements of This AD

Upgrade Software/Hardware—Model MD–11 and MD–11F Airplanes

(j) For Model MD–11 and MD–11F airplanes: Within 18 months after the effective date of this AD, upgrade the FMC software, and hardware as applicable, by doing the applicable actions specified in paragraph (j)(1), (j)(2), (j)(3), or (j)(4) of this AD. Doing this upgrade terminates the requirements of paragraphs (f) through (i) of this AD.

(1) For airplanes on which FMC P/N 4059050–906 through –912 is installed: Install new software in the main avionics rack, and reidentify FMC–1 and FMC–2 as P/N 4059050–913, in accordance with the Accomplishment Instructions of Boeing Service Bulletin MD11–34–130, dated March 16, 2005.

Note 2: Boeing Service Bulletin MD11–34–130 refers to Honeywell Alert Service Bulletin 4059050–34–A6024, dated March 9, 2005, as an additional source of service information for doing the actions specified in paragraph (j)(1) of this AD.

(2) For airplanes on which FMC P/N 4059050–920 is installed: Install new software in the main avionics rack, and reidentify FMC–1 and FMC–2 as P/N 4059050–921, in accordance with the Accomplishment Instructions of Boeing Service Bulletin MD11–34–129, dated September 22, 2004.

Note 3: Boeing Service Bulletin MD11–34–129 refers to Honeywell Alert Service Bulletin 4059050–34–A6023, dated September 22, 2004, as an additional source of service information for doing the actions specified in paragraph (j)(2) of this AD.

(3) For airplanes on which FMC P/N 4059050–906 through –911 is installed: In lieu of doing the software upgrade specified in paragraph (j)(1) of this AD, install new hardware and software and reidentify FMC–1 and FMC–2 as P/N 4059050–921, by doing all the applicable actions specified in the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD11–34–085, Revision 01, dated September 20, 1999; Boeing Service Bulletin MD11–34–068, Revision 3, dated April 6, 2004; and Boeing Service Bulletin MD11–34–129, dated September 22, 2004.

Note 4: McDonnell Douglas Service Bulletin MD11–34–085 references Honeywell Service Bulletin 4059050–34–6020, Revision 1, dated April 30, 1999; Boeing Service Bulletin MD11–34–068 references Honeywell Service Bulletin 4059050–34–0010, dated March 19, 2003; and Boeing Service Bulletin MD11–34–129 refers to Honeywell Alert Service Bulletin 4059050–34–A6023, dated September 22, 2004; as additional sources of service information for the doing the actions specified in paragraph (j)(3) of this AD.

(4) For airplanes on which FMC P/N 4059050–912 is installed: In lieu of doing the software upgrade specified in paragraph (j)(1) of this AD, install new hardware and software and reidentify FMC–1 and FMC–2 as P/N 4059050–921, by doing all the applicable actions specified in the Accomplishment Instructions of Boeing Service Bulletin MD11–34–068, Revision 3, dated April 6, 2004; and Boeing Service Bulletin MD11–34–129, dated September 22, 2004.

Note 5: Boeing Service Bulletin MD11–34–068 references Honeywell Service Bulletin 4059050–34–0010, dated March 19, 2003; and Boeing Service Bulletin MD11–34–129 refers to Honeywell Alert Service Bulletin 4059050–34–A6023, dated September 22, 2004; as additional sources of service information for the doing the actions specified in paragraph (j)(4) of this AD.

Upgrade Software—Model MD–10–10F and MD–10–30F Airplanes

(k) For Model MD–10–10F and MD–10–30F airplanes: Within 18 months after the effective date of this AD, install new software in the main avionics rack and reidentify the versatile integrated avionics (VIA) digital computer as P/N 4081580–903, in accordance with the Accomplishment Instructions of Boeing Service Bulletin MD10–31–053, Revision 1, dated June 14, 2005.

Note 6: Boeing Service Bulletin MD10–31–053 refers to Honeywell Alert Service Bulletin 4081580–31–A6002, dated January 14, 2005, as an additional source of service information for doing the actions specified in paragraph (k) of this AD.

Parts Installation

(l) For Model MD–11 and MD–11F airplanes: As of the effective date of this AD, no person may install an FMC, P/N 4059050–906 through –912, or –920, on any airplane; except as required by the actions specified in paragraphs (h), (i), and (j) of this AD.

(m) For MD–10–10F and MD–10–30F airplanes: As of the effective date of this AD, no person may install a VIA digital computer, P/N 4081580–901 or 4081580–902, on any airplane.

Alternative Methods of Compliance (AMOCs)

(n)(1) The Manager, Los Angeles Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(3) AMOCs approved previously in accordance with AD 2001–21–05 are approved as AMOCs for the corresponding provisions of paragraphs (f) through (i) of this AD.

(4) Doing the actions required by paragraph (j) or (k) of this AD, as applicable, is approved as an AMOC for the actions required by AD 2004–18–04, amendment 39–13782.

Issued in Renton, Washington, on February 1, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–2176 Filed 2–14–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23921; Directorate Identifier 2005–NM–205–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all Boeing Model 747 series airplanes. The existing AD currently requires repetitive inspections for cracking of the top and side panel webs and panel stiffeners of the nose wheel well (NWW), and corrective actions if necessary. This proposed AD would reduce the interval for certain repetitive inspections and remove a certain optional inspection. This proposed AD would also require replacing the NWW side and top panels with new panels. The replacement would terminate the repetitive inspections. This proposed AD results from the development of a new modification. We are proposing this AD to prevent fatigue cracks in the top and side panel webs and stiffeners of the NWW, which could compromise the structural integrity of the NWW and could lead to the rapid decompression of the airplane.

DATES: We must receive comments on this proposed AD by April 3, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to

http://dms.dot.gov and follow the instructions for sending your comments electronically.

- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Nick Kusz, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6432; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2006–23921; Directorate Identifier 2005–NM–205–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or may can visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

On April 13, 2005, we issued AD 2005–09–02, amendment 39–14070 (70 FR 29940, May 25, 2005), for all Boeing Model 747 series airplanes. That AD requires repetitive inspections for cracking of the top and side panel webs and panel stiffeners of the nose wheel well (NWW), and corrective actions if necessary. That AD resulted from a report of an in-flight decompression of a Model 747–100 series airplane that had accumulated 27,241 total flight cycles. We issued that AD to detect and correct fatigue cracks in the top and side panel webs and stiffeners of the NWW, which could compromise the structural integrity of the NWW and could lead to the rapid decompression of the airplane.

Actions Since Existing AD Was Issued

In the preamble to AD 2005–09–02, we stated that we considered the requirements ''interim action'' and were considering further rulemaking to reduce certain repetitive inspection intervals. In addition, we explained that the manufacturer was developing a modification and that we would consider additional rulemaking once the modification was developed, approved, and available. We now have determined that further rulemaking is indeed necessary, and this proposed AD follows from that determination.

Relevant Service Information

We have reviewed Boeing Service Bulletin 747–53A2562, Revision 1, dated July 28, 2005. The service bulletin describes procedures for replacing the NWW side and top panels with new panels. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2005–09–02 and would continue to require repetitive inspections for cracking of the top and side panel webs and panel stiffeners of the NWW, and corrective actions if necessary. This proposed AD would also reduce the interval for certain repetitive inspections and would require replacing the NWW side and top panels with new panels. The replacement would terminate the repetitive inspections. The replacement would be accomplished in accordance with the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and Boeing Service Bulletin 747–53A2562.''

Differences Between the Proposed AD and Boeing Service Bulletin 747–53A2562

Boeing Service Bulletin 747–53A2562, Revision 1, dated July 28, 2005, specifies an effectivity of Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–300, 747–400, 747–400D, 747SR, and 747SP series airplanes, line numbers 1 through 1307. The service bulletin notes that a future revision will add airplanes with a nose cargo door, and airplanes after line number 1307. This proposed AD is applicable to all Model 747 airplanes. This proposed AD would require that, for Model 747 airplanes identified as Group 1 and 3 in the service bulletin (Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–300, 747–400, 747–400D, 747SR, and 747SP series airplanes, line numbers 1 through 1307, except those airplanes modified to the Special Freighter configuration), the replacement of the NWW side and top panels must be done according to the service bulletin. For all Model 747 airplanes identified as Group 2 in the service bulletin and airplanes not identified in the service bulletin, the replacement must be done according to a method approved by the FAA.

Explanation of Change to Applicability

We have revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Explanation of Changes Made to Paragraph (f) of This Proposed AD

We have reduced the repetitive inspection intervals for Area 3 from 6,000 flight cycles to 1,500 flight cycles for airplanes on which the inspections have been done in accordance with Boeing Alert Service Bulletin (ASB) 747–53A2465, Revision 2, dated November 11, 2004 (referenced as the appropriate source of service information for doing the inspection specified in paragraph (f)(2)(ii) of the

existing AD). In addition, we have removed the optional inspection specified in paragraph (f)(1)(ii) of the existing AD; however, we have given credit for airplanes on which the inspections have been done in accordance with Boeing Service Bulletin 747–53A2465, Revision 1, dated October 16, 2003, for the Area 3 inspections. (Revision 1 was referenced as the appropriate source of service information for doing the inspection specified in paragraph (f)(1)(ii) of the existing AD with a repetitive inspection interval of 1,000 flight cycles.)

Since issuance of Boeing ASB 747–53A2465, Revision 2, Boeing has received additional reports of cracking and has done additional analysis to determine the flight-cycle interval. The 1,500 flight-cycle interval for Area 3 specified in the proposed AD matches the interval specified in Boeing ASB 747–53A2465, Revision 4, dated February 24, 2005 (referenced as the appropriate source of service information for doing the new requirements of the existing AD). We have determined that the 1,500 flight-cycle interval will ensure an acceptable level of safety.

We also removed paragraphs (f)(1)(i) and (f)(2)(i) of the existing AD because all operators will be doing the inspections of the top and sidewall panel webs specified in paragraph (g) of the existing AD. The inspections specified in paragraph (g) of the existing AD terminate the inspections of the top and side panel webs specified in paragraphs (f)(1)(i) and (f)(2)(i) of the existing AD. Therefore we do not need to restate paragraphs (f)(1)(i) and (f)(2)(i) in the proposed AD.

Explanation of Change Made to This Proposed AD

We have simplified paragraph (l) of this proposed AD by referring to the ''Alternative Methods of Compliance (AMOCs)'' paragraph of this proposed AD for repair methods and we have revised the AMOCs paragraph in this proposed AD to clarify the delegation authority for Authorized Representatives for the Boeing Commercial Airplanes Delegation Option Authorization.

Clarification of AMOC Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Costs of Compliance

There are about 1,127 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. Work hours are estimated at an average labor rate of $65 per work hour.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Area 1 and 3 inspections (required by AD 2005–09–02).	79	$0	$5,135, per inspection cycle ..	255	$1,309,425, per inspection cycle.
Area 2 inspections (required by AD 2005–09–02).	8–18	0	$520–$1,170, per inspection cycle.	255	Up to $298,350, per inspection cycle.
Replacement (new proposed action).	800	115,765	$167,765	255	$42,780,075.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14070 (70 FR 29940, May 25, 2005) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2006–23921; Directorate Identifier 2005–NM–205–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by April 3, 2006.

Affected ADs

(b) This AD supersedes AD 2005–09–02.

Applicability

(c) This AD applies to all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from the development of a new modification. We are issuing this AD to prevent fatigue cracks in the top and side panel webs and stiffeners of the nose wheel well (NWW), which could compromise the structural integrity of the NWW and lead to the rapid decompression of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Requirements of AD 2005–09–02 With New Repetitive Interval and Service Information

Initial and Repetitive Inspections of the Top and Side Panel Stiffeners

(f) Prior to the accumulation of 16,000 total flight cycles, or within 1,000 flight cycles after January 27, 2005 (the effective date of AD 2004–25–23, amendment 39–13911), whichever is later, do internal detailed and surface high frequency eddy current (HFEC) inspections of the top and side panel stiffeners of the NWW (specified as Area 3 in the service bulletin) for cracks in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin (ASB) 747–53A2465, Revision 4, dated February 25, 2005. Repeat the inspections thereafter at the compliance times specified in paragraph (f)(1) or (f)(2) of this AD, as applicable.

(1) For airplanes on which an inspection has not been done before the effective date of this AD in accordance with any service bulletin listed in Table 1 of this AD: Within 1,500 flight cycles after doing the inspection specified in paragraph (f) of this AD, repeat the inspection. Repeat the inspection thereafter at intervals not to exceed 1,500 flight cycles.

(2) For airplanes on which an inspection has been done before the effective date of this AD in accordance with any service bulletin listed in Table 1 of this AD: Within 6,000 flight cycles after doing the inspection specified in paragraph (f) of this AD or within 1,500 flight cycles after the effective date of this AD, whichever occurs first, repeat the inspection. Repeat the inspection thereafter at intervals not to exceed 1,500 flight cycles.

TABLE 1.—BOEING SERVICE BULLETINS

Service bulletin	Revision level	Date
Boeing ASB 747–53A2465	(1)	April 5, 2001.
Boeing Service Bulletin 747–53A2465	1	October 16, 2003.
Boeing ASB 747–53A2465	2	November 11, 2004.
Boeing ASB 747–53A2465	3	December 23, 2004.
Boeing ASB 747–53A2465	4	February 25, 2005.

[1] Original.

Note 1: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirrors, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Initial Inspections of the Top and Sidewall Panel Webs

(g) Do an external detailed inspection of the top and sidewall panel webs of the NWW (specified as Area 1 and Area 2 in the service bulletin) for cracks, in accordance with the Accomplishment Instructions of Boeing ASB 747–53A2465, Revision 4, dated February 24, 2005, at the earlier of the times specified in paragraphs (g)(1) and (g)(2) of this AD.

(1) At the later of the times specified in paragraph (g)(1)(i) and (g)(1)(ii) of this AD:

(i) Before accumulating 20,000 total flight cycles.

(ii) Within 100 flight cycles or 90 days after May 10, 2005 (the effective date of AD 2005–09–02), whichever occurs first.

(2) At the later of the times specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD:

(i) Before accumulating 16,000 total flight cycles.

(ii) Within 1,000 flight cycles after May 10, 2005.

Repetitive Inspections of the Top and Sidewall Panel Webs

(h) Repeat the inspection required by paragraph (g) of this AD at the intervals specified in paragraphs (h)(1) and (h)(2) of this AD, as applicable.

(1) For airplanes with fewer than 20,000 total flight cycles as of May 10, 2005, repeat at intervals not to exceed 1,000 flight cycles until the first inspection after the airplane reaches 20,000 total flight cycles.

(2) For airplanes with 20,000 total flight cycles or more, repeat at intervals not to exceed 500 flight cycles.

Ultrasonic Inspections (UT)

(i) Do a UT inspection of the top and sidewall panel webs for cracks, in accordance with Boeing ASB 747–53A2465, Revision 4, dated February 24, 2005, at the later of the times specified in paragraphs (i)(1) and (i)(2) of this AD. Repeat the inspections thereafter at intervals not to exceed 500 flight cycles.

(1) Prior to the accumulation of 20,000 total flight cycles.

(2) Within 100 flight cycles or 90 days after May 10, 2005, whichever occurs first.

Additional Inspections and Corrective Actions

(j) Except as specified in paragraph (l) of this AD, if any crack is found during any inspection required by this AD, prior to further flight, do any applicable additional detailed inspections of stiffeners and beams and make repairs, in accordance with the Accomplishment Instructions of Boeing ASB 747–53A2465, Revision 4, dated February 24, 2005.

Actions Accomplished Per Previous Issues of Service Bulletin

(k) The actions specified in paragraphs (k)(1), (k)(2), and (k)(3) of this AD are acceptable for compliance with the corresponding action specified in the applicable paragraph.

(1) Inspections and corrective actions accomplished before January 27, 2005, in accordance with Boeing ASB 747–53A2465, dated April 5, 2001, are considered acceptable for compliance with the corresponding inspections specified in paragraph (f) of this AD.

(2) Inspections accomplished before the effective date of this AD, in accordance with Boeing Service Bulletin 747–53A2465, Revision 1, dated October 16, 2003; Boeing ASB 747–53A2465, Revision 2, dated November 11, 2004; and Boeing ASB 747–53A2465, Revision 3, dated December 23, 2004; are considered acceptable for compliance with the corresponding inspections specified in paragraph (f) of this AD.

Note 2: The detailed and surface HFEC inspections of the top and side panel stiffeners of the NWW specified in Boeing ASB 747–53A2465, dated April 5, 2001; and Boeing Service Bulletin 747–53A2465, Revision 1, dated October 16, 2003; are acceptable for compliance with the internal detailed and surface HFEC inspections specified in paragraph (f) of this AD.

(3) Inspections and corrective actions accomplished before May 10, 2005, in accordance with Boeing Service Bulletin 747–53A2465, Revision 1, dated October 16, 2003; Boeing ASB 747–53A2465, Revision 2, dated November 11, 2004; and Boeing ASB 747–53A2465, Revision 3, dated December 23, 2004; are considered acceptable for compliance with the corresponding inspections specified in paragraphs (g) and (h) of this AD.

Certain Other Corrective Actions

(l) Where Boeing ASB 747–53A2465 specifies contacting the manufacturer if certain cracking is found, this AD requires, before further flight, repairing the cracking using a method approved in accordance with the procedures specified in paragraph (p) of this AD.

No Reporting Requirement

(m) Although Boeing ASB 747–53A2465 specifies that operators should report inspection results to the manufacturer, this AD does not require those inspection results to be reported.

New Requirements of This AD

Terminating Action

(n) For Group 1 and 3 airplanes identified in Boeing Service Bulletin 747–53A2562, Revision 1, dated July 28, 2005: Before accumulating 22,000 total flight cycles or within 48 months after the effective date of this AD, whichever occurs later, replace the NWW side and top panels with new panels in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–53A2562, Revision 1, dated July 28, 2005. Doing the replacement terminates the requirements of this AD.

(o) For Group 2 airplanes identified in Boeing Service Bulletin 747–53A2562, Revision 1, dated July 28, 2005, and Model 747 airplanes not identified in the service bulletin: Before accumulating 22,000 total flight cycles or within 48 months after the effective date of this AD, whichever occurs later, replace the NWW side and top panels using a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Doing the replacement terminates the requirements of this AD.

Alternative Methods of Compliance (AMOCs)

(p)(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane.

(4) AMOCs approved previously according to AD 2005–09–02, amendment 39–14070, are approved as AMOCs for the corresponding provisions of paragraphs (f) through (j) and (l) of this AD.

(5) AMOCs approved previously according to AD 2004–25–23, amendment 39–13911, are approved as AMOCs for the corresponding provisions of paragraph (f) of this AD.

Issued in Renton, Washington, on January 26, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–2170 Filed 2–14–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22857; Airspace Docket No. 05–AAL–37]

Proposed Establishment of Class E Airspace; Galbraith Lake, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Galbraith Lake, AK. Two Standard Instrument Approach Procedures (SIAPs) are being published for the Galbraith Lake Airport. Adoption of this proposal would result in establishment of Class E airspace upward from 700 feet (ft.) above the surface at Galbraith Lake, AK.

DATES: Comments must be received on or before April 3, 2006.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–22857/ Airspace Docket No. 05–AAL–37, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–22857/Airspace Docket No. 05–AAL–37.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemakings (NPRMs)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677,

to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR part 71), which would create new Class E airspace at Galbraith Lake, AK. The intended effect of this proposal is to create Class E airspace upward from 700 ft. above the surface to contain Instrument Flight Rules (IFR) operations at Galbraith Lake, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has amended two Special SIAPs for the Galbraith Lake Airport. The approaches are the Non Directional Beacon (NDB) Distance Measuring Equipment (DME) Runway (Rwy) 12, Amendment (Amdt) 2, and the Microwave Landing System (MLS) Rwy 12, Amdt 1. New Class E controlled airspace extending upward from 700 ft above the surface within the Galbraith Lake Airport area would be established by this action. The proposed airspace is sufficient in size to contain aircraft executing instrument procedures at the Galbraith Lake Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9N, *Airspace Designations and Reporting Points,* dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at Galbraith Lake Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, *Airspace Designations and Reporting Points,* dated September 1, 2005, and effective September 15, 2005, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Galbraith Lake, AK [New]

Galbraith Lake Airport, AK
(Lat. 68°28′47″ N., long. 149°29′24″ W.)

That airspace extending upward from 700 feet above the surface within a 9.5-mile radius of the Galbraith Lake Airport.

* * * * *

Issued in Anchorage, AK, on February 7, 2006.

Anthony M. Wylie,

Manager, Safety, Area Flight Service Operations.

[FR Doc. E6–2180 Filed 2–14–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–23713; Airspace Docket No. 06–AAL–06]

Proposed Revision of Class E Airspace; Togiak, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Class E airspace at Togiak, AK. Two Standard Instrument Approach Procedures (SIAPs) are being revised and two SIAPs are being produced for the Togiak Airport. Adoption of this proposal would result in revision of Class E airspace upward from 700 feet (ft.) above the surface at Togiak, AK.

DATES: Comments must be received on or before April 3, 2006.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2006–23713/ Airspace Docket No. 06–AAL–06, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation Nassif Building at the above address.

An informal docket may also be examined during normal business hours at the Office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.*

Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2006–23713/Airspace Docket No. 06–AAL–06.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemakings (NPRMs)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR part 71), which would revise the Class E airspace at Togiak, AK. The intended effect of this proposal is to revise Class E airspace upward from 700 ft. above the surface to contain Instrument Flight Rules (IFR) operations at Togiak, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has amended two SIAPs and created two new SIAPs for the Togiak Airport. The amended approaches are (1) Non-Directional Beacon (NDB)/Distance Measuring Equipment (DME)–A, Amendment (Amdt) 1; and (2) NDB–B, Amdt 1. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV (GPS)) RWY03, Original; and (2) RNAV (GPS) RWY 21, Original. This action would modify the Class E controlled airspace extending upward from 700 ft. above the surface near the Togiak Airport. The proposed airspace is sufficient in size to contain aircraft executing instrument procedures at the Togiak Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9N, *Airspace Designations and Reporting Points,* dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at Togiak Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, *Airspace Designations and Reporting Points,* dated September 1, 2005, and effective September 15, 2005, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Togiak, AK [Revised]

Togiak Airport, AK
(Lat. 59°03′10″ N., long. 160°23′49″ W.)
Togiak NDB
(Lat. 59°03′50″ N., long. 160°22′27″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile

radius of the Togiak Airport, and within 4 miles west and 8 miles east of the 218° bearing of the Togiak NDB extending from the 6.5-mile radius to 20 miles southwest of the Togiak NDB, and within 4 miles west and 8 miles east of the 019° bearing of the Togiak NDB extending from the 6.5-mile radius to 16 miles northeast of the Togiak NDB.

* * * * *

Issued in Anchorage, AK, on February 7, 2006.

Anthony M. Wylie,

Manager, Safety, Area Flight Service Operations.

[FR Doc. E6–2182 Filed 2–14–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–23712; Airspace Docket No. 06–AAL–05]

Proposed Establishment of Class E Airspace; Ugnu-Kuparuk, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Ugnu-Kuparuk, AK. Five Special Standard Instrument Approach Procedures (SIAPs) are being revised, and three Special SIAPs are being produced for the Ugnu-Kuparuk Airport. Adoption of this proposal would result in establishment of Class E airspace upward from 700 feet (ft.) above the surface at Ugnu-Kuparuk, AK.

DATES: Comments must be received on or before April 3, 2006.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2006–23712/ Airspace Docket No. 06–AAL–05, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2006–23712/Airspace Docket No. 06–AAL–05.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemakings (NPRMs)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would establish Class E airspace at Ugnu-Kuparuk, AK. The intended effect of this proposal is to create Class E airspace upward from 700 ft. above the surface to contain Instrument Flight Rules (IFR) operations at Ugnu-Kuparuk, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has amended five Special SIAPs and created three new Special SIAPs for the Ugnu-Kuparuk Airport. The amended approaches are (1) Non-directional Beacon (NDB) Runway (RWY) 05, Amendment (Amdt) 2; (2) NDB RWY 23, Amdt 2; (3) NDB–Distance Measuring Equipment (DME) RWY 05, Amdt 2; (4) NDB–DME RWY 23, Amdt 2; and (5) Localizer (LOC)–DME Back-Course RWY 23, Amdt 2. The new approaches are (1) Area Navigation (Global Positioning System (RNAV (GPS)) RWY 05, Original; (2) RNAV (GPS) RWY 23, Original; and (3) Instrument Landing System (ILS) RWY 05, Original. This action would create Class E controlled airspace extending upward from 700 ft. above the surface near the Ugnu-Kuparuk Airport. The proposed airspace is sufficient in size to contain aircraft executing instrument procedures at the Ugnu-Kuparuk Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at Ugnu-Kuparuk Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Kuparuk, AK [New]

Ugnu-Kuparuk Airport, AK
(Lat. 70°19′51″ N., long. 149°35′51″ W.)
Pitsand NDB
(Lat. 70°19′41″ N., long. 149°38′07″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Ugnu-Kuparuk Airport, and within 8 miles north and 4 miles south of the 078° bearing of the Pitsand NDB extending from the 7-mile radius to 16 miles east of the Pitsand NDB and within 8 miles north and 4 miles south of the 258° bearing of the Pitsand NDB extending from the 7-mile radius to 16 miles west of the Pitsand NDB.

* * * * *

Issued in Anchorage, AK, on February 7, 2006.

Anthony M. Wylie,

Manager, Safety, Area Flight Service Operations.

[FR Doc. E6–2186 Filed 2–14–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–23711; Airspace Docket No. 06–AAL–04]

Proposed Revision of Class E Airspace; Middleton Island, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Class E airspace at Middleton Island, AK. Two Standard Instrument Approach Procedures (SIAPs) are being revised, and two SIAPs are being produced for the Middleton Island Airport. Adoption of this proposal would result in revision of Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Middleton Island, AK.

DATES: Comments must be received on or before April 3, 2006.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2006–23711/Airspace Docket No. 06–AAL–04, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2006–23711/Airspace Docket No. 06–AAL–04.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments

received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemakings (NPRMs)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would revise the Class E airspace at Middleton Island, AK. The intended effect of this proposal is to revise Class E airspace upward from 700 ft. and 1,200 ft. above the surface to contain Instrument Flight Rules (IFR) operations at Middleton Island, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has amended two SIAPs and created two new SIAPs for the Middleton Island Airport. The amended approaches are (1) Very High Frequency Omni-directional Range (VOR) Runway (RWY) 01, Amendment (Amdt) 2; and (2) VOR/Distance Measuring Equipment (DME) RWY 19, Amdt 5. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV (GPS)) RWY 01, Original; and (2) RNAV (GPS) RWY 19, Original. This action would modify the Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface near the Middleton Island Airport. The proposed airspace is sufficient in size to contain aircraft executing instrument procedures at the Middleton Island Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9N, *Airspace Designations and Reporting Points,* dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at Middleton Island Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, *Airspace Designations and Reporting Points,* dated September 1, 2005, and effective September 15, 2005, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Middleton Island, AK [Revised]

Middleton Island Airport, AK
(Lat. 59°27′00″ N., long. 146°18′26″ W.)
Middleton Island VOR/DME
(Lat. 59°25′19″ N., long. 146°21′00″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Middleton Island Airport, and within 4 miles either side of the 038° radial of the Middleton Island VOR/DME extending from the 6.5-mile radius to 12 miles northeast of the VOR/DME, and that airspace extending upward from 1,200 feet above the surface within a 42-mile radius of the Middleton Island VOR/DME.

* * * * *

Issued in Anchorage, AK, on February 7, 2006.

Anthony M. Wylie,

Manager, Safety, Area Flight Service Operations.

[FR Doc. E6–2190 Filed 2–14–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. FAA–2005–22593]

Mode S Transponder Requirements in the National Airspace System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Policy notice and disposition of comments.

SUMMARY: On October 7, 2005, the Federal Aviation Administration (FAA) published a document in the **Federal Register** announcing its long-term policy for Mode S transponder equipment requirements. The policy also sought comment on the proposed termination date of March 1, 2007, for operators currently exempted from the Mode S transponder requirement of 14 CFR parts 121 and 135. This action responds to the comments and adopts the proposed date for which all applicable exemptions will terminate.

ADDRESSES: The complete docket for the proposed exemption policy may be examined at the DOT Docket Web site: *http://dms.dot.gov*. Interested persons may perform a Simple Search at that Web site, entering the docket number 22593. Comments may also be examined in Room PL–401, on the Plaza Level of the Department of Transportation Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ida Klepper, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–9677.

SUPPLEMENTARY INFORMATION

Background

On October 7, 2005, the FAA published two notices in the **Federal Register** concerning the Mode S transponder equipment requirements in 14 CFR parts 121 and 135. The first notice withdrew Notice No. 96–5, which proposed to withdraw the Mode S transponder requirements for part 135 and certain 121 operations. The first October 7 notice summarized our reassessment of the requirements and articulated the basis for our conclusion to retain the Mode S transponder equipment requirements. (*See* 70 FR 58966.) Accordingly, the FAA withdrew Notice No. 96–5.

The second notice published on October 7 announced our policy with respect to the exemptions granted from the Mode S transponder equipment requirements. (*See* 70 FR 58976.) We explained that since Notice 96–5 was published in May 1996, the agency granted several exemptions to the Mode S transponder requirements because we were progressing toward the removal of this equipment requirement from all aircraft, except those aircraft operated under part 121 and that have TCAS II. As we subsequently revised our long-term plan for Mode S transponders, we sought comment on the appropriate date for which all current exemptions should terminate. The notice proposed March 1, 2007, as the appropriate termination date.

Discussion of Comments

We received comments from AirTran Airways, Inc., Federal Express (FedEx), the Regional Airlines Association (RAA), and one individual. However, while the notice specifically sought comment on whether March 1, 2007 was the appropriate date to terminate current exemptions, no comment responded to that request. Although all comments were beyond the scope of the request, we respond to those comments below.

AirTran Airways fully supported that all applicable aircraft comply with the Mode S transponder equipment requirements.

FedEx commented on two aspects of the notice. First, it questioned whether it must request an extension of its current exemption to continue to use the Mode C and Mode A transponders installed on its Caravan airplanes until March 1, 2007. (FedEx's exemption expires on March 1, 2006.) Second, FedEx stated that it has both Mode A and Mode C transponders installed on its Caravan airplanes. FedEx questioned whether it must replace each transponder with a separate Mode S transponder.

The FAA does not intend to grant new exemptions or subsequent extensions of current exemptions during this interim period unless circumstances warrant. FedEx may continue to operate its Caravan airplanes with Mode A and Mode C installed, even after expiration of its exemption, until the transponders are no longer repairable and must be replaced. If FedEx finds that the transponders must be replaced after its exemption terminates, it must do so in accordance with the regulations and install a Mode S transponder. The FAA proposed the March 2007 date to provide a reasonable time for operators to plan for the need to replace outdated equipment when necessary. The FAA did not suggest this date to provide a vehicle for operators to quickly seek an exemption or extension to bide more time for which to equip their aircraft. We do not find that the public interest is served by simply granting additional exemptions for yet another year.

It appears to be a business decision by FedEx to have two transponders installed in its aircraft. This is not a regulatory requirement. Consequently, if FedEx needs to install a Mode S transponder in its aircraft, it only needs to install one transponder under the regulations. Any election to install a second transponder is at FedEx's discretion.

An individual commented that the ADS–B system is far superior to Mode S because it has the capability to receive other traffic and weather information and urged the adoption of a nationwide Capstone policy to benefit all operators (including general aviation) as opposed to enforcing outdated Mode S equipment. Also, RAA commented it would expect the Mode S requirement to be consistent with the FAA's long term objectives for ADS–B to avoid costly retrofits.

Capstone is a successful initiative, but is a limited concept for a defined and remote area in southwest Alaska. Capstone does not rely on ADS–B technology but rather on Global Positioning Systems (GPS) and Wide Area Augmentation Systems (WAAS) in areas where ground sensors are not yet available. ADS–B is not considered an alternative to the more mature Mode S technology at this time due to the uncertain timeframe of widespread availability of the technology. FAA plans for expanding the ADS–B technology to the lower 48 states are still under review. Lastly, any requirement to equip and use ADS–B technology must be established through rulemaking.

RAA requested that the agency complete a cost benefit analysis of the Mode S policy and provide an opportunity for public comment on that analysis.

The FAA is required to economically analyze its intended regulations.[1] (A regulatory evaluation, including cost-benefit analysis, was completed for both the final rule adopting the Mode S requirement[2] and the notice proposing to withdraw the requirement.[3]) The FAA is not required to conduct an economic review because it determines not to proceed with a proposed regulation. A number of exemptions were granted between 1996 and 2005. The FAA could have simply denied all requests for exemptions until the Mode S transponder equipment requirement was in fact rescinded. However, we did not view this as supporting the public interest and concluded that certain exemptions were justified given the agency position on Mode S in 1996. Several operators have benefited from

[1] Executive Order 12866, Regulatory Flexibility Act of 1980 (5 U.S.C. 5601, et seq.), Trade Agreements Act (19 U.S.C. 4 §§ 2531–2533, Unfunded Mandate Reform Act of 1995 (Pub. L. 104–4).

[2] 52 FR 3380; February 3, 1987.

[3] 61 FR 26036; May 23, 1996.

the exemptions and were able to defer the equipage costs for several years. Since that time, technology developments and the availability of Mode S avionics dictate that we revise our policy. As we are retaining the Mode S transponder requirements, the basis for the current exemptions no longer exists. Operators are not entitled to an exemption as a matter of right. Consequently, we do not agree with RAA's assertion that the previous grant of exemptions is tantamount to a rule and thus deserving of a cost-benefit analysis. We did view, as critical and warranting public input, the appropriate date for which the exemptions would terminate and that affected operators would be required to install a Mode S transponder if their Mode C or Mode A transponder could not be repaired and specifically requested comment on that aspect.

RAA also stated that there are more than 130,000 general aviation users who are not required to install Mode S and questioned why the Mode S transponder are required for part 135 operators.

The Mode S transponder requirement for part 91 operations was rescinded in 1992 (57 FR 34614; August 5, 1992). The agency concluded that the expense of requiring the equipment for all part 91 operators could not be justified since the vast majority of general aviation operators do not operate in congested airspace. Furthermore, to impose a Mode S requirement on all such operators would be unduly burdensome with little safety benefit. At this time, we do not see evidence that this rationale is no longer valid.

As stated previously, any new exemption or request for extension will be evaluated carefully as to whether it would serve the public interest. Requesting an exemption simply because previous exemptions have been granted is not considered in the public interest.

Adoption of the March 1, 2007 Date

The FAA concludes that March 1, 2007, provides a reasonable timeframe for the exemptions to terminate. We intend to judiciously exercise our authority in reviewing any petitions for exemption or requests for extension under 14 CFR 11.81.

Operators are advised that this policy does not require the installation of Mode S transponders on March 1, 2007. Operators may continue to use Mode A and Mode C transponders beyond the expiration of their exemption and past March 1, 2007, until they can no longer be repaired and must be replaced.

Issued in Washington, DC, on February 9, 2006.

James J. Ballough,

Director, Flight Standards Service.

[FR Doc. E6–2178 Filed 2–14–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 892

[Docket No. 2005N–0467]

Medical Devices; Radiology Devices; Reclassification of Bone Sonometers

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is publishing a proposed rule to reclassify bone sonometer devices from class III into class II, subject to special controls. A bone sonometer is a device that transmits ultrasound energy into the human body to measure acoustic properties of bone that indicate overall bone health and fracture risk. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a draft guidance document entitled ''Class II Special Controls Guidance Document: Bone Sonometers'' that the agency proposes to use as a special control for these devices.

DATES: Submit comments by May 16, 2006.

ADDRESSES: You may submit comments, identified by Docket No. 2005N–0467, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described in the *Electronic Submissions* portion of this paragraph.

Instructions: All submissions received must include the agency name and Docket No(s). and Regulatory Information Number (RIN) (if a RIN number has been assigned) for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Robert A. Phillips, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1212, ext. 130.

SUPPLEMENTARY INFORMATION:

I. Regulatory Authority

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1979 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (SMDA) (Pub. L. 101–629), and the Food and Drug Administration Modernization Act of 1997 (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments

devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device type; and (3) published a final regulation classifying the device type. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA), until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Section 513(f)(3) allows FDA to initiate reclassification of a postamendment device classified into class III under section 513(f)(1) of the act, or the manufacturer or importer of a device to petition the Secretary of Health and Human Services for the issuance of an order classifying the device in class I or class II. FDA's regulations in 21 CFR 860.134 set forth the procedures for the filing and review of a petition for reclassification of such class III devices. To change the classification of the device, it is necessary that the proposed new classification have sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

II. Regulatory History of the Device

A bone sonometer is a postamendments device classified into class III under section 513(f)(1) of the act. Therefore, this generic type of device cannot be placed in commercial distribution unless it is reclassified under section 513(f)(3), or is the subject of a PMA or notice of completion of a product development protocol under section 515 of the act (21 U.S.C. 360e). Accordingly, under section 513(f)(3) of the act, FDA is initiating this proposal to reclassify bone sonometers from class III to class II when intended for the following: (1) Determining the possible presence of osteoporosis and assessing fracture risk, (2) monitoring bone changes over time, and/or (3) assessing non-age-related bone loss.

III. Device Description

A bone sonometer is a device that transmits ultrasound energy into the human body to measure acoustic properties of bone that indicate overall bone health and fracture risk. Bone sonometers are used for determining the possible presence of osteoporosis and assessing fracture risk; monitoring bone changes over time; and assessing non-age-related bone loss. The primary components of the device are a voltage generator, a transmitting transducer, a receiving transducer, hardware, and software for reception and processing of the received ultrasonic signal. By processing an ultrasonic signal propagated through a bone, it is possible to estimate broadband ultrasonic attenuation (BUA) and/or speed of sound (SOS). These two acoustic parameters have also been shown in prospective clinical trials to predict fracture incidence (Refs. 1 and 2). In this way, BUA and SOS can be used to aid a physician in determining the possible presence of osteoporosis and assessing fracture risk; monitoring bone changes over time; and assessing non-age-related bone loss.

IV. Summary of the Data Upon Which the Reclassification is Based

FDA is proposing this reclassification based on experience with the device and information on the benefits and risks of the device that have developed since the device's classification into class III. Specifically, distinct bone sonometers from different manufacturers demonstrate similar performance and increases the agency's confidence in this technology. In addition, a recent study of 149,524 women compared four peripheral techniques, including bone sonometry, peripheral dual energy x-ray absorptiometry (DEXA), finger DEXA, and heel single x-ray absorpiometry, for their ability to predict fracture incidence within one year of measurement. (Ref. 3.) The results show that all four techniques were equally effective for this purpose. Peripheral DEXA and finger DEXA are in class II.

Moreover, as discussed next, information regarding the risks of the device, along with measures to mitigate these risks, has developed. FDA believes this information is sufficient to establish special controls for this device that will provide a reasonable assurance of its safety and effectiveness if it is reclassified into class II.

V. Risks to Health

FDA believes that bone sonometers, when used for determining the possible presence of osteoporosis and assessing fracture risk; monitoring bone changes over time; or assessing non-age-related bone loss; should be reclassified into class II because special controls, in addition to general controls, can provide reasonable assurance of the safety and effectiveness of the device, and there is sufficient information to establish special controls to provide such assurance. After considering the information regarding bone sonometer use and technology, published literature, and medical device reports, FDA has evaluated the risks to health associated with use of these devices. FDA believes that electrical shock; electromagnetic compatibility; tissue damage; and inaccurate measurement present risks to health associated with the use of bone sonometers. The draft special controls guidance document entitled ''Class II Special Controls Guidance Document: Bone Sonometers'' aids in mitigating the risks by recommending performance characteristics, safety testing, and appropriate labeling.

VI. Special Controls

Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of the draft guidance document entitled ''Class II Special Controls Guidance Document: Bone Sonometers,'' that the agency is proposing to use as the special control for these device types. The draft guidance document contains specific recommendations with regard to device performance testing and other information that should be included in a premarket (510(k)) notification submission. Particular sections of the guidance document address the following: (1) Electrical safety, (2) electromagnetic compatibility, (3) acoustic intensity, (4) device performance characteristics, and (5) labeling. FDA believes that this draft special controls guidance, in addition to general controls, can address the risks to heath described in section V of this document.

In table 1 of this document, FDA has identified the risks to health associated

with the use of these devices in the first column and the recommended mitigation measures identified in the draft class II special controls guidance document in the second column. These recommendations will also help ensure that the device has appropriate performance characteristics and labeling for its use.

Following the effective date of any final reclassification rule based on this proposal, any firm submitting a 510(k) submission for a bone sonometer device will need to address the issues covered in the class II special controls guidance document. However, the firm need only show that its device meets the recommendations of the class II special controls guidance document or in some other way provides equivalent assurances of safety and effectiveness.

TABLE 1

Identified Risk	Recommended Mitigation Measures
Electrical shock	Electrical Safety
Electromagnetic interference	Electromagnetic Compatibility
Tissue damage	Acoustic Intensity
Inaccurate measurement leading to inappropriate therapy	Non-Clinical Testing Clinical Testing Labeling

VII. FDA's Findings

FDA believes that bone sonometers should be reclassified into class II because special controls, in addition to general controls, will provide reasonable assurance of the safety and effectiveness of these devices, and there is sufficient information to establish special controls to provide such assurance. FDA, therefore, is proposing to reclassify bone sonometers into class II and establish the class II special controls guidance document as a special control for these devices.

FDA believes for this type of device, premarket notification is necessary to provide reasonable assurance of the device's safety and effectiveness; therefore, the device would not be exempt from premarket notification requirements (section 510 of the act). Thus, persons intending to market this type of device must submit to FDA a premarket notification, prior to marketing the device, which contains information about the device they intend to market.

VIII. Effective Date

FDA proposes that any final rule that may issue based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

IX. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this reclassification action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

X. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is not a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of these devices from class III to class II will relieve all manufacturers of this device type of the costs of complying with the premarket approval requirements in section 515 of the act. Because reclassification will reduce regulatory costs with respect to this device type, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The agency, therefore, certifies that this proposed rule, if finalized, will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $115 million, using the most current (2003) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

XI. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

XII. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520) is not required.

FDA also tentatively concludes that the special controls guidance document identified by this proposed rule does not contain new information collection provisions that are subject to review and clearance by OMB under the PRA. Elsewhere in this issue of the **Federal**

Register, FDA is publishing a notice announcing the availability of the draft guidance document entitled ''Class II Special Controls Guidance Document: Bone Sonometers.'' The notice contains an analysis of the paperwork burden for the draft guidance.

XIII. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m. Monday through Friday.

XIV. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday:

1. Bauer, D. C., et al., ''Broadband Ultrasound Attenuation Predicts Fractures Strongly and Independently of Densitometry in Older Women,'' *Archives of Internal Medicine*, 157, pp. 629–634, 1997.

2. Hans, D., et al., ''Ultrasonographic Heel Measurements to Predict Hip Fracture in Elderly Women: The EPIDOS Prospective Study,'' *Lancet*, 348, pp. 511–514, 1996.

3. Miller, P. D., et al., ''Prediction of Fracture Risk in Postmenopausal White Women With Peripheral Bone Densitometry: Evidence From the National Osteoporosis Risk Assessment,'' *Journal of Bone and Mineral Research*, 17, pp. 2222–2230, 2002.

List of Subjects in 21 CFR Part 892

Medical devices, Radiation protection, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 892 be amended as follows:

PART 892—RADIOLOGY DEVICES

1. The authority citation for 21 CFR part 892 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Add section 892.1180 to subpart B to read as follows:

§ 892.1180 Bone sonometer.

(a) *Identification.* A bone sonometer is a device that transmits ultrasound energy into the human body to measure acoustic properties of bone that indicate overall bone health and fracture risk. The primary components of the device are a voltage generator, a transmitting transducer, a receiving transducer, and hardware and software for reception and processing of the received ultrasonic signal.

(b) *Classification.* Class II (special controls). The special control for this device is FDA's ''Class II Special Controls Guidance Document: Bone Sonometers.'' See § 892.1(e) of this chapter for the availability of this guidance document.

Dated: January 17, 2006.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. E6–2076 Filed 2–14–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 67 and 68

[USCG–2005–20258]

RIN 1625–AA95

Vessel Documentation: Lease Financing for Vessels Engaged in the Coastwise Trade

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend its regulations for documenting lease-financed vessels that have a ''coastwise endorsement'' (i.e., vessels used in trade and passenger service within the U.S. or between U.S. ports and those used in dredging and towing in U.S. waters). The vessels affected by this proposal are owned by foreign-owned or controlled U.S. companies, where there is a ''demise charter'' to a U.S. citizen (i.e., an agreement for the charterer to assume responsibility for operating, crewing, and maintaining the vessel as if the charterer owned it).

DATES: Comments and related material must reach the Docket Management Facility on or before May 16, 2006. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before May 16, 2006.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2005–20258 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web Site: *http://dms.dot.gov.*

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) Fax: 202–493–2251.

(4) Hand delivery: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(5) Federal eRulemaking Portal: *http://www.regulations.gov.*

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Patricia Williams, Deputy Director, National Vessel Documentation Center, Coast Guard, telephone 304–271–2506. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this rulemaking (USCG–2005–20258), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or hand delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Public Meeting: We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

II. Background and Purpose

The Coast Guard Authorization Act of 1996 (1996 Act) amended the vessel documentation laws to promote lease financing of vessels with a coastwise endorsement on their certificate of documentation. Public Law 104–324, section 1113(d), 46 U.S.C. 12106(e). A coastwise endorsement is required to engage in trade and passenger service within or between U.S. ports and in dredging and towing in U.S. waters. The vessels affected by this proposal are owned by foreign-owned or controlled U.S. companies that are demise chartered to a coastwise qualified U.S. citizen. A coastwise qualified citizen can be either an individual who is a U.S. citizen or any other entity that is at least 75 percent U.S. owned and controlled.

Lease financing has become a very common way to finance capital assets in the maritime industry. Under lease financing, ownership of the vessel is in the name of the owner, with a demise charter to the charterer (i.e., the operator) of the vessel. A demise or bareboat charter is an agreement in which the charterer assumes the responsibility for operating, crewing, and maintaining the vessel as if the charterer owned it. Because of the potential cost savings, many vessel operators choose to acquire or build vessels through lease financing, instead of the traditional mortgage financing. But, until the 1996 Act, operators were prevented from obtaining lease financing from U.S. companies that are less than 75 percent U.S. owned, because the leasing company had to be a U.S. citizen under section 2 of the Shipping Act, 1916, which requires at least 75 percent U.S. ownership. 46 U.S.C. app. 802.

The Coast Guard published a final rule in the **Federal Register** on February 4, 2004, implementing most of the provisions of the 1996 Act. 69 FR 5390. On the same day, the Coast Guard and the Maritime Administration published a joint notice of proposed rulemaking (NPRM) entitled ''Vessel Documentation: Lease Financing for Vessels Engaged in the Coastwise Trade; Second Rulemaking.'' 69 FR 5403. However, on August 9, 2004, the President signed the Coast Guard and Maritime Transportation Act of 2004 (2004 Act), which made amendments to 46 U.S.C. 12106 with regard to certain vessels engaged in the coastwise trade. Public Law 108–293. In response to those changes, the Coast Guard and Maritime Administration withdrew the joint NPRM. 70 FR 19376 (Apr. 13, 2005).

Subsection 608(a) of the 2004 Act adds a new paragraph (f) to 46 U.S.C. 12106 setting forth an ownership certification requirement. Under subsection 608(a), the owner of a lease-financed vessel must now certify each year:

- That it (or, if the vessel is owned by a trust or similar arrangement, the beneficiary of the trust or similar arrangement) is a leasing company, bank, or financial institution;
- That it owns or holds the beneficial interest in the vessel solely as a ''passive investment,'' as defined in 608(a);
- That it does not operate any vessel for hire and is not an affiliate of any person who operates any vessel for hire; and
- That it is independent from, and not an affiliate of, any charterer of the vessel or any person who has the right, directly or indirectly, to control or direct the movement or use of the vessel.

In addition, subsection 608(a) allows a separate certification for tank vessels that primarily carry qualified proprietary cargo such as oil, petroleum products, petrochemicals, or liquefied natural gas. Subsection 608(b) provides requirements for a few particular vessels in the Alaska trade and is referenced in the note to proposed § 68.60. Subsection 608(c) provides for a permanent grandfather from the provisions of subsection 608(a) for most vessels documented under 46 U.S.C. 12106(e) on or before August 9, 2004, the date of enactment of the 2004 Act.

III. Discussion of Proposed Rule

This NRPM would amend the regulations on the documentation for U.S.-built vessels owned by foreign-owned or controlled U.S. companies that are lease financed to a U.S. citizen for use in the coastwise trade. This proposed rule addresses amendments provided by Congress under the 2004 Act concerning information needed to determine the eligibility of a vessel owner for a coastwise endorsement under the lease-financing law. Specifically, it proposes the following changes:

- Update and provide consistent documentation requirements to determine the eligibility of lease-financed vessels for coastwise endorsements.
- Permanently grandfather, from the new requirements, all lease-financed vessels, except for offshore supply vessels (OSV) documented on or before August 9, 2004.
- Require owners of lease-financed OSVs with valid coastwise endorsements issued before August 9, 2004, to reapply for a new coastwise endorsement by August 9, 2007.
- Require all owners of lease-financed vessels with recently-issued coastwise endorsements (i.e., those issued after August 9, 2004) to certify each year that their ownership and investment status has not changed.

• Require entities that enter into a demise sub-charter agreement to file a copy of the sub-charter and amendments to the sub-charter with the Director of the National Vessel Documentation Center (NVDC).

A. *Third-party audits.* Our February 4, 2004, NPRM that was withdrawn on April 13, 2005, requested comments as to whether we should require that endorsement applications to the Coast Guard be audited by a third party. 69 FR 5403. We stated that we were considering requiring each applicant to provide a certification from an independent auditor with expertise in the business of vessel financing and operations. That certification would provide additional assurance that the transaction would in fact qualify under the lease-financing statute and regulations. However, we recognized that this additional requirement would add time and cost to the process of preparing the application. We expressed particular interest in obtaining comments on this question.

The responses received were evenly split between those favoring third-party audits and those opposing it. However, in light of the new self-certification requirement in section 608 of the 2004 Act, which is reflected in proposed § 68.65, it would appear that the cost of third-party audits would outweigh any benefits. 46 U.S.C. 12106(f). The 2004 Act prohibits owners from being affiliates of vessel operators, which should not require a third-party audit. For this reason, we have not included a third-party-audit requirement in our proposed regulatory changes. However, before reaching a conclusion on this matter, we again seek comments on this question.

B. *Waiver of qualified proprietary cargo requirement by the Secretary of Transportation.* Section 608(d) of the 2004 Act authorizes the Secretary of Transportation to waive or reduce the requirement that at least 70 percent of annual cargo consist of qualified proprietary cargo under 46 U.S.C. 12106(f)(3)(A)(iii) for vessels owned by entities with ship-operating affiliates. This provision will be handled by the Secretary of Transportation under subsection 608 and will not be implemented by this proposed rule. See the note at the end of proposed § 68.65.

C. *Reorganization of the requirements for a coastwise endorsement under a demise charter.* To improve organization of the existing regulations for qualifying and documenting a vessel with a coastwise endorsement under a demise charter, we propose that they be transferred, without substantive change (except as described in paragraph G below), from 46 CFR part 67 to 46 CFR part 68, which deals with other exceptions to the normal coastwise rules. In addition, all of the subparts and sections in existing part 68 would be re-designated to remove the outmoded, hyphenated numbering system. The existing regulations for coastwise endorsement under a demise charter would be placed in proposed subpart D and the new regulations under the 2004 Act would be placed in proposed subpart C. The following derivation table sets out the sources of each of the re-designated subparts and sections.

D. *Derivation table for proposed 46 CFR part 68.*

Proposed	Source
Subpart A	Subpart 68.01.
§ 68.1	New.
§ 68.3	68.01–1.
§ 68.5	68.01–3.
§ 68.7	68.01–5.
§ 68.9	68.01–7.
§ 68.11	68.01–9.
§ 68.13	68.01–11.
§ 68.15	68.01–13.
§ 68.17	68.01–15.
§ 68.19	68.01–17.
Appendix A to Subpart A.	Appendix A to Subpart 68.01.
Appendix B to Subpart A.	Appendix B to Subpart 68.01.
Subpart B	Subpart 68.05.
§ 68.25	68.05–1.
§ 68.27	68.05–3.
§ 68.29	68.05–5.
§ 68.31	68.05–7.
§ 68.33	68.05–9.
§ 68.35	68.05–11.
§ 68.37	68.05–13.
Appendix A to Subpart B.	Appendix A to Subpart 68.05.
Appendix B to Subpart B.	Appendix B to Subpart 68.05.
Subpart C	New.
§ 68.50	New.
§ 68.55	New.
§ 68.60	67.20.
§ 68.65	New.
§ 68.70(a)	New.
§ 68.70(b)	67.147(b).
§ 68.75(a)(1) to (a)(5)	67.179.
§ 68.75(a)(6)	67.147(a)(1) and (a)(2).
§ 68.80	New.
Subpart D	New.
§ 68.100	New.
§ 68.103	New.
§ 68.105	New.
§ 68.107	67.147.
§ 68.109	67.179.
§ 68.111	67.167(c)(10).

Part 68 would be renamed ''DOCUMENTATION OF VESSELS: COASTWISE ENDORSEMENT; EXCEPTIONS TO OWNERSHIP QUALIFICATION.'' This heading better reflects the purpose of part 68, which already contains the existing rules for coastwise qualification of vessels documented under the Bowaters Amendment and for oil spill response vessels. It would now also contain the lease-financing provisions under 46 U.S.C. 12106(e).

Existing subpart 68.03, which had been reserved for documentation of vessels under the Act of August 9, 1954, but which was never used, would be removed as unnecessary.

E. *Changes to existing 46 CFR part 67.* Because of the above described reorganization, the existing lease-financing provisions in part 67 would be moved, without substantive change (except as described in paragraph G below), to part 68, subpart D. The definitions of certain terms in § 67.3 would be relocated to proposed § 68.103.

Section 67.20, Coastwise endorsement for a vessel under a demise charter, would be transferred to 68.105. References to 67.20 would be removed from § 67.35(c), 67.36(c)(2), and 67.39(c)(2) and replaced with references to § 68.60 or 68.105.

Section 67.147, Application procedure: Coastwise endorsement for a vessel under a demise charter, would be revised and re-designated as proposed 68.60, Eligibility of a vessel for a coastwise endorsement under [subpart C].

In 67.167, Requirements for exchange of Certificate of Documentation, paragraph(c)(10) would be revised by removing the list of requirements for exchange of a Certificate of Documentation for a vessel endorsement under 46 U.S.C. 12106(e). This would be replaced with a reference to the requirements now in proposed § 68.80 and 68.111. Paragraph (c)(11) of 67.167 would be removed.

Section 67.179, Application Procedure: Coastwise operation of a barge under a demise charter, is revised and re-designated as proposed 68.75, Application procedure for barges to be operated in coastwise trade without being documented.

F. *Requirements under the 2004 Act (proposed subpart C).* These proposed requirements track subsection 608(a) of the 2004 Act, which added new paragraph (f) to 46 U.S.C. 12106, setting forth an ownership certification requirement. New subpart C, consisting of §§ 68.50 through 68.80, would address vessels with a coastwise endorsement issued on or after August 9, 2004. Section 68.50 would provide the purpose and applicability of the new subpart. Section 68.55 would include the definition of the terms ''affiliate,'' ''cargo,'' ''oil,'' ''operation or

management,'' ''passive investment,'' ''qualified proprietary cargo,'' ''sub-charter,'' and ''United States affiliate.'' These definitions would come from the 2004 Act.

G. *Existing requirements under 46 CFR part 67 (proposed subpart D).* These requirements would be moved from part 67 to the new part 68, subpart D, consisting of § 68.100 through 68.111, which would address vessels with a coastwise endorsement issued before August 9, 2004.

The 2004 Act granted special rights to vessels under a demise charter that were eligible for, and received, a document with a coastwise endorsement before August 9, 2004; to barges deemed eligible to operate in coastwise trade before August 9, 2004, without being documented; and to certain replacement vessels. Until August 9, 2007, this subpart would also apply to OSVs with a certificate of documentation endorsed, as of August 9, 2004, with a coastwise endorsement under 46 U.S.C. 12106(e).

Proposed 68.103 would set forth definitions for terms carried over from existing § 67.3.

Proposed § 68.107(d) and (e) and 68.109(d) and (e) (as transferred from existing § 67.147(d) and 67.179(d)) would change the provision for notifying the Coast Guard's NVDC of sub-charters. In the existing regulations, notice is required only when requested by the Director of the NVDC. These provisions would be changed to require notice of demise sub-charters even without a request from the Director, while notice of other sub-charters remains only upon request by the Director. These changes, also found in proposed §§ 68.70(d) and (e) and 68.75(d) and (e), would assist the Coast Guard in determining whether an entity meets the statutory requirements.

IV. Regulatory Analysis

Assessment

This proposed rule is a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review. The Office of Management and Budget (OMB) has reviewed it under that Order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that Order. We expect the economic impact of this proposed rule to be minimal. A draft Regulatory Analysis is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. A summary of the analysis follows:

The Coast Guard proposes to amend its regulations on the documentation for U.S.-built vessels owned by foreign-owned or controlled U.S. companies that are lease financed to a U.S. citizen for use in the coastwise trade. This proposed rule mostly addresses amendments provided by Congress under the Coast Guard and Maritime Transportation Act of 2004 concerning information needed to determine the eligibility of a vessel owner for a coastwise endorsement under the lease-financing law.

This proposed rule would update and provide consistent documentation requirements to determine the eligibility of lease-financed vessels for coastwise endorsements as discussed under the ''Discussion of Proposed Rule'' section of this preamble. The proposed rule also implements the Congressionally-mandated permanent grandfathering of all lease-financed vessels, except for OSVs documented on or before August 9, 2004, from the new requirements. However, this proposed rule would make three changes to the existing regulations that would cause additional costs to industry. First, it would require owners of lease-financed OSVs with valid coastwise endorsements issued before August 9, 2004, to reapply for a new coastwise endorsement by August 9, 2007. Second, it would require all owners of lease-financed vessels with recently issued coastwise endorsements (*i.e.*, those issued after August 9, 2004) to certify each year that their ownership and investment status has not changed. Lastly, it would require entities that enter into a demise sub-charter agreement to file a copy of the sub-charter and amendments to the sub-charter with the Director of the NVDC. These changes are additional collection-of-information (paperwork) requirements.

Based on Coast Guard data, there are currently eight owners of OSVs that would be affected by this proposed rule. We also estimate from the Coast Guard data and from NVDC information that there would be 25 current and future owners affected by the annual certification requirements of this proposed rule, which includes the eight owners of OSVs affected by this proposed rule. We do not have historical data on the number of affected entities impacted by the proposed collection-of-information requirements for demise sub-charter agreements. We assume there would be approximately three demise sub-charter agreements over the next 10 years based on NVDC projections.

We estimate that the total first-year cost of this proposed rule to industry is $11,059. This first-year cost includes the one-time cost to the affected OSV owners to reapply for a new coastwise endorsement, the first year cost of annual certification for the affected vessel owners, and a portion of the cost to affected vessel charterers associated with paperwork submissions of future demise sub-charter agreements. After the first year of implementation, the total annual cost of this proposed rule to industry is $1,621, which is the first-year cost less the one-time cost to the affected OSV owners to reapply for a new coastwise endorsement. The estimated 10-year (2005–2014), discounted present value of the total cost of this proposed rule to all affected owners and charterers is $21,623 based on a 7 percent discount rate and $23,684 based on a 3 percent discount rate.

The benefit of this proposed rule would be that it updates and provides consistent documentation requirements. These requirements comply with mandates provided by Congress under the 2004 Act concerning information and documentation needed to determine the eligibility of a vessel owner. These updated documentation requirements would assist the Coast Guard in determining the eligibility of lease-financed vessels for coastwise endorsements. We need this information to determine whether an entity meets the current statutory requirements. The result of these proposed documentation requirements would support our efforts to accurately issue coastwise endorsements to eligible lease-financed vessels.

We are interested in the potential impacts from this proposed rule. If you think that this proposed rule would have a significant economic impact on you, your business, or your organization, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why, how, and to what degree you think this rule would have an economic impact on you.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect owners of lease-financed OSVs with valid coastwise endorsements issued

before August 9, 2004, owners of lease-financed vessels with recently-issued coastwise endorsements, and charterers that enter into a demise sub-charter agreement.

The owners mentioned above are U.S. subsidiaries or branch companies that are owned or controlled by larger, foreign, corporate affiliates and, therefore, are considered as ''one party with such interests aggregated'' under the small business size regulations (13 CFR 121.103). We determined whether an owner is a small or large entity using the North American Industry Classification System (NAICS) codes and the small entity revenue or employee size standards provided by the U.S. Small Business Administration (SBA).

Based on our initial determination, the owners in each NAICS code category exceed the SBA size standard and are classified as large businesses. We used the following NAICS codes and SBA size standards to evaluate owner size:

- 238910—Site Preparation Contractors, $12 million in annual corporate revenue.
- 483111—Deep Sea Freight Transportation, 500 annual corporate employees.
- 532310—General Rental Centers, $6 million in annual corporate revenue.
- 551111—Bank Holding Companies, $6 million in annual corporate revenue.

There would be costs of this proposed rule for the charterers of the lease-financed vessels mentioned above. Charterers would be affected by this proposed rule if they enter into a demise sub-charter agreement. However, we have determined that the possible charterers affected by the additional costs are classified as large businesses. We used the following NAICS codes and SBA size standards to evaluate the charterer size:

- 213112—Support Activities for Oil and Gas Operations, $6 million in annual corporate revenue.
- 483111—Deep Sea Freight Transportation, 500 annual corporate employees.

This initial determination indicates that the owners and charterers affected by this proposed rule are classified as large businesses by SBA standards. Therefore, at this time, the Coast Guard certifies, under 5 U.S.C. 605(b), that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. Public Law 104–121. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Patricia Williams, Deputy Director, National Vessel Documentation Center (NVDC), U.S. Coast Guard, telephone 304–271–2506. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995 and require a revision to an existing collection. 44 U.S.C. 3501–3520.

As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Under 46 CFR 68.65, 68.70, 68.75, 68.100, 68.107, and 68.109, this proposed rule would amend the collection-of-information requirements for vessel owners and charterers engaging in the coastwise trade under the lease-financing provisions of 46 U.S.C. 12106(e). The Coast Guard needs this information to determine whether an entity meets the statutory requirements. These provisions will require modifying the burden in the collection previously approved by the Office of Management and Budget (OMB) under OMB Control Number 1625–0027 (formerly 2115–0110).

Title: Vessel Documentation: Lease Financing for Vessels Engaged in the Coastwise Trade; Third Rulemaking.

OMB Control Number: 1625–0027.

Summary of the Collection of Information: This proposed rule would add new collection-of-information requirements in proposed §§ 68.65, 68.70, 68.75, 68.100, 68.107, and 68.109 for vessel owners and charterers applying to engage in the coastwise trade under the lease-financing provisions of 46 U.S.C. 12106(e). These new requirements would require a change in previously approved collection under OMB Control No. 1625–0027.

Need for Information: The Coast Guard needs this information to determine whether an entity meets the statutory requirements.

Proposed Use of Information: The Coast Guard would use this information to determine whether an entity meets the statutory requirements.

Description of Respondents: The respondents are vessel owners and charterers that engage in the coastwise trade under the lease-financing provisions of 46 U.S.C. 12106(e). We estimate that this proposed rule would involve one-time responses for owners of lease-financed OSVs that must reapply for new certificates of documentation, annual responses for owners that must submit ownership certifications, and the possibility of an additional response every 3 years for entities involved in demise sub-charters.

Number of Respondents: The existing OMB-approved number of respondents, as adjusted on February 4, 2004, is 180,035. This proposed rule would increase the number of respondents in this OMB-approved collection by approximately 25. The total number of respondents would be 180,060.

Frequency of Response: The existing OMB-approved number of responses, as adjusted on February 4, 2004, is 245,285. It will vary by year due to the grandfathering provisions of the proposed rule. The first year of this proposed rule would increase that number by 58. After the first year of implementation, the increase would be 25 annually. We estimate an additional response every 3 years for entities involved in demise sub-charters. However, we consider this negligible. The total number of responses in the

first year of implementation would be 245,343 and 245,310 annually thereafter.

Burden of Response: The burden resulting from this proposed rule would arise from changes that require entities that own certain lease-financed OSVs to reapply for new coastwise endorsements and require certain entities to submit annual ownership certifications to the NVDC. We estimate that it would take a total of 30 minutes per OSV to complete the application for a new coastwise endorsement, since the current Coast Guard paperwork-burden time for this application (Form CG–1258) is 30 minutes. We estimate that it would take 5 minutes processing time to sign and submit the annual ownership certification form, since the Coast Guard paperwork-burden time for the Endorsement Renewal Certification (Form CG–1280), a similar form, is 5 minutes.

Estimate of Total Annual Burden: The existing OMB-approved total annual burden, as adjusted on February 4, 2004, is 50,512 hours. The first year of this proposed rule would increase that number by approximately 19 hours. After the first year of implementation, the increase would be approximately 2 hours annually. The total number of hours in the first year of implementation would be 50,531 and 50,514 annually thereafter.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to OMB for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them.

We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order. Though it is a ''significant regulatory action'' under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(d), of the Instruction, from further environmental documentation. This proposed rulemaking is administrative in nature and concerns the documentation of vessels engaged in the coastwise trade. A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. Comments on this section will be considered before we make the

final decision on whether this rule should be categorically excluded from further environmental review.

List of Subjects

46 CFR Part 67

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 68

Oil pollution, Reporting and recordkeeping requirements, Vessels.

Regulatory Text

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR parts 67 and 68 as follows:

PART 67—DOCUMENTATION OF VESSELS

1. The authority citation for part 67 continues to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103, 2110; 46 U.S.C. app. 876; Department of Homeland Security Delegation No. 0170.1.

§ 67.3 [Amended]

2. In § 67.3, remove the following terms and their definitions: ''affiliate,'' ''group,'' ''operation or management of vessels,'' ''parent,'' ''primarily engaged in leasing or other financing transactions,'' ''sub-charter,'' and ''subsidiary.''

§ 67.20 [Removed]

3. Remove § 67.20.

§ 67.35 [Amended]

4. In § 67.35(c), remove the words ''§ 67.20'' and add, in their place, the words ''§§ 68.60 or 68.105 of this chapter''.

§ 67.36 [Amended]

5. In § 67.36(c)(2), remove the words ''§ 67.20'' and add, in their place, the words ''§§ 68.60 or 68.105 of this chapter''.

§ 67.39 [Amended]

6. In § 67.39(c)(2), remove the words ''§ 67.20'' and add, in their place, the words ''§§ 68.60 or 68.105 of this chapter''.

§ 67.147 [Removed]

7. Remove § 67.147.

8. In § 67.167, in paragraph (c)(9), following the semicolon, add the word ''and''; revise paragraph (c)(10) to read as shown below; and remove paragraph (c)(11):

§ 67.167 Requirement for exchange of Certificate of Documentation.

* * * * *

(c) * * *

(10) For a vessel with a coastwise endorsement under 46 U.S.C. 12106(e), one of the events in §§ 68.80 or 68.111 of this chapter occurs.

* * * * *

§ 67.179 [Removed]

9. Remove § 67.179.

PART 68—DOCUMENTATION OF VESSELS: EXCEPTIONS TO COASTWISE QUALIFICATION

10. Revise the authority citation for part 68 to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103, 2110; 46 U.S.C. app. 876; Department of Homeland Security Delegation No. 0170.1.

11. Revise the heading to part 68 to read as shown above.

Subpart 68.03 [Removed]

12. Remove subpart 68.03.

13. In part 68—

a. Redesignate the subparts and their appendices as shown in the following table:

Old subpart/appendix	New subpart/appendix
Subpart 68.01	Subpart A.
Appendix A to Subpart 68.01 of Part 68	Appendix A to Subpart A of Part 68.
Appendix B to Subpart 68.01 of Part 68	Appendix B to Subpart A of Part 68.
Subpart 68.03	[Removed].
Subpart 68.05	Subpart B.
Appendix A to Subpart 68.05 of Part 68	Appendix A to Subpart B of Part 68.
Appendix B to Subpart 68.05 of Part 68	Appendix B to Subpart B of Part 68.

b. In the redesignated subparts, redesignate the sections as shown in the following table:

Old section	New section
68.01–1	68.3
68.01–3	68.5
68.01–5	68.7
68.01–7	68.9
68.01–9	68.11
68.01–11	68.13
68.01–13	68.15
68.01–15	68.17
68.01–17	68.19
68.05–1	68.25
68.05–3	68.27
68.05–5	68.29
68.05–7	68.31
68.05–9	68.33
68.05–11	68.35
68.05–13	68.37

c. In the redesignated sections listed in the first column of the following table, the reference in the second column is revised to read as shown in the third column:

New section	Old reference	New reference
68.7	68.01–3	68.5
68.7	68.01–9(a)	68.11(a)
68.9	68.01–1	68.3
68.9	68.01–9(a)	68.11(a)
68.11	68.01–5	68.7
68.11	68.01–3(a)	68.5(a)
68.11	68.01–11	68.13
68.11	68.01–13	68.15
68.11	68.01–7	68.9
68.11	13	68.15
68.13	68.01–15	68.17
68.13	68.01–17	68.19
68.15	68.01–15	68.17
68.15	68.01–1	68.3
68.15	68.01–15(c)	68.17(c)
68.17	68.01–1	68.3
68.19	68.01–5	68.7
68.29	68.05–9	68.33
68.31	68.05–5	68.29
68.35	68.05–13	68.37
68.35	68.05–7(a)	68.31(a)
68.37	68.05–11(a)	68.35(a)
68.37	68.05–5	68.29
68.37	68.05–9	68.33

d. The table of contents for part 68 reads as follows:

PART 68—DOCUMENTATION OF VESSELS: EXCEPTIONS TO COASTWISE QUALIFICATION

Subpart A—Regulations for Engaging in Limited Coastwise Trade

Sec.

14. In part 68, revise the heading to subpart A to read as follows:

Subpart A—Regulations for Engaging in Limited Coastwise Trade

15. Add § 68.1 to subpart A to read as follows:

§ 68.1 Purpose of subpart.

This subpart contains citizen ownership requirements and procedures to allow documentation of vessels that do not meet the requirements of part 67 of this chapter. The requirements are for corporations engaged in a manufacturing or mineral industry in the United States.

§ 68.7 [Amended]

16. In § 68.7—

a. In paragraph (b), after the redesignated number ''§ 68.11(a)'', remove the words ''of this subpart''; and following the words ''appendix A'', add the words ''of this subpart''.

§ 68.9 [Amended]

17. In § 68.9—

a. In paragraph (a), following the words ''appendix B'', add the words ''of this subpart'';

b. In paragraph (b), following the words ''appendix B'', add the words ''of this subpart''; and

c. In paragraph (c), following the redesignated number ''§ 68.11(a)'', remove the words ''of this subpart''; and following the words ''appendix B'', add the words ''of this subpart''.

§ 68.11 [Amended]

18. In § 68.11—

a. In paragraph (a), after the redesignated number ''§ 68.7'', remove the words ''of this subpart''; and

b. In paragraph (b), after the redesignated number ''§ 68.9'', remove the words ''of this subpart''.

Appendix A to Subpart A of Part 68 [Amended]

19. In appendix A—

a. In the appendix heading and in the text, remove the words ''(46 U.S.C. 883–1)'' and add, in their place, the words ''(46 U.S.C. app. 883–1)''; and

b. Following the word ''§ 67.39(c)'', add the words ''of this chapter''.

Appendix B to Subpart A of Part 68 [Amended]

20. In appendix B, in the appendix heading and in the text, remove the words ''(46 U.S.C. 883–1)'' and add, in their place, the words ''(46 U.S.C. app. 883–1)''.

21. Add new subpart C, consisting of §§ 68.50 through 68.80, to read as follows:

Subpart C—Vessels With a Coastwise Endorsement Issued on or After August 9, 2004, That Are Demise Chartered to Coastwise Qualified Citizens

68.50 Purpose and applicability.
68.55 Definitions.
68.60 Eligibility of a vessel for a coastwise endorsement under this subpart.
68.65 Annual ownership certification.
68.70 Application procedure for vessels other than barges to be operated in coastwise trade without being documented.
68.75 Application procedure for barges to be operated in coastwise trade without being documented.
68.80 Invalidation of a coastwise endorsement.

Subpart C—Vessels With a Coastwise Endorsement Issued on or After August 9, 2004, That Are Demise Chartered to Coastwise Qualified Citizens

§ 68.50 Purpose and applicability.

(a) This subpart contains requirements, in addition to those in part 67 of this chapter, for obtaining a coastwise endorsement for a U.S.-built vessel—

(1) That is owned by a person that qualifies as a citizen under §§ 67.35(a), 67.36(a), 67.37, or 67.39(a) of this chapter; and

(2) That is demise chartered to a coastwise qualified citizen under §§ 67.33, 67.35(c), 67.36(c), 67.37, 67.39(c), or 67.41 of this chapter.

(b) This subpart applies to a vessel with a coastwise endorsement issued on or after August 9, 2004. It does not apply to a vessel under subpart D of this part.

§ 68.55 Definitions.

In addition to the terms defined in § 67.3 of this chapter, as used in this subpart—

Affiliate means, with respect to any person, any other person that is—

(1) Directly or indirectly controlled by, under common control with, or controlling that person; or

(2) Named as being part of the same consolidated group in any report or other document submitted to the United States Securities and Exchange Commission or the Internal Revenue Service.

Cargo does not include cargo to which title is held for non-commercial reasons and primarily for the purpose of evading the requirements of § 68.65(a)(2).

Oil has the meaning given that term in 46 U.S.C. 2101(20).

Operation or management, for vessels, means all activities related to the use of vessels to provide services.

These activities include, but are not limited to, ship agency; ship brokerage; activities performed by a vessel operator or demise charterer in exercising direction and control of a vessel, such as crewing, victualing, storing, and maintaining the vessel and ensuring its safe navigation; and activities associated with controlling the use and employment of the vessel under a time charter or other use agreement. It does not include activities directly associated with making financial investments in vessels or the receipt of earnings derived from these investments.

Passive investment means an investment in which neither the investor nor any affiliate of the investor is involved in, or has the power to be involved in, the formulation, determination, or direction of any activity or function concerning the use, operation, or management of the asset that is the subject of the investment.

Qualified proprietary cargo means—

(1) Oil, petroleum products, petrochemicals, or liquefied natural gas cargo that is beneficially owned by the person who submits to the Director, National Vessel Documentation Center, an application or annual certification under § 68.65(a)(2), or by an affiliate of that person, immediately before, during, or immediately after the cargo is carried in coastwise trade on a vessel owned by that person;

(2) Oil, petroleum products, petrochemicals, or liquefied natural gas cargo not beneficially owned by the person who submits to the Director, National Vessel Documentation Center, an application or an annual certification under § 68.65(a)(2), or by an affiliate of that person, but that is carried in coastwise trade by a vessel owned by that person and which is part of an arrangement in which vessels owned by that person and at least one other person are operated collectively as one fleet, to the extent that an equal amount of oil, petroleum products, petrochemicals, or liquefied natural gas cargo beneficially owned by that person, or an affiliate of that person, is carried in coastwise trade on one or more other vessels, not owned by that person, or an affiliate of that person, if the other vessel or vessels are also part of the same arrangement;

(3) In the case of a towing vessel associated with a non-self-propelled tank vessel where the two vessels function as a single self-propelled vessel, oil, petroleum products, petrochemicals, or liquefied natural gas cargo that is beneficially owned by the person who owns both the towing vessel and the non-self-propelled tank vessel, or any United States affiliate of that person, immediately before, during, or immediately after the cargo is carried in coastwise trade on either of the two vessels; or

(4) Any oil, petroleum products, petrochemicals, or liquefied natural gas cargo carried on any vessel that is either a self-propelled tank vessel having a length of at least 210 meters (about 689 feet) or a tank vessel that is a liquefied natural gas carrier that—

(i) Was delivered by the builder of the vessel to the owner of the vessel after December 31, 1999; and

(ii) Was purchased by a person for the purpose, and with the reasonable expectation, of transporting on the vessel liquefied natural gas or unrefined petroleum beneficially owned by the owner of the vessel, or an affiliate of the owner, from Alaska to the continental United States.

Sub-charter means all types of charters or other contracts for the use of a vessel that are subordinate to a charter. The term includes, but is not limited to, a demise charter, a time charter, a voyage charter, a space charter, and a contract of affreightment.

United States affiliate means, with respect to any person, an affiliate the principal place of business of which is located in the United States.

§ 68.60 Eligibility of a vessel for a coastwise endorsement under this subpart.

(a) To be eligible for a coastwise endorsement under 46 U.S.C. 12106(e) and to operate in coastwise trade under 46 U.S.C. 12106(e) and 12110(b), a vessel must meet the following:

(1) The vessel is eligible for documentation under 46 U.S.C. 12102.

(2) The vessel is eligible for a coastwise endorsement under § 67.19(c) of this chapter and has not lost coastwise eligibility under § 67.19(d) of this chapter.

(3) The person that owns the vessel (or, if the vessel is owned by a trust or similar arrangement, the beneficiary of the trust or similar arrangement) makes the certification in § 68.65.

(4) The person that owns the vessel has transferred to a qualified U.S. citizen under 46 U.S.C. app. 802 full possession, control, and command of the vessel through a demise charter in which the demise charterer is considered the owner *pro hac vice* during the term of the charter.

(5) The charterer must certify to the Director, National Vessel Documentation Center, that the charterer is a citizen of the United States for engaging in the coastwise trade under 46 U.S.C. app. 802.

(6) The demise charter is for a period of at least 3 years, unless a shorter period is authorized by the Director, National Vessel Documentation Center, under circumstances such as—

(i) When the vessel's remaining life would not support a charter of 3 years; or

(ii) To preserve the use or possession of the vessel.

(b) To apply for a coastwise endorsement for a vessel under a demise charter, see § 68.70 and, for a barge, see § 68.75.

Note to § 68.60: Section 608(b) of Public Law 108–293 provides special requirements for certain vessels in the Alaska trade.

§ 68.65 Annual ownership certification.

(a) At the time of initial application for documentation and at the time for annual renewal of the endorsement as required by § 67.163 of this chapter, the person that owns a vessel with a coastwise endorsement under § 68.60 must certify in writing to the Director, National Vessel Documentation Center—

(1) That the person who owns a vessel with a coastwise endorsement under § 68.60—

(i) Is a leasing company, bank, or financial institution;

(ii) Owns, or holds the beneficial interest in, the vessel solely as a passive investment;

(iii) Does not operate any vessel for hire and is not an affiliate of any person who operates any vessel for hire; and

(iv) Is independent from, and not an affiliate of, any charterer of the vessel or any other person who has the right, directly or indirectly, to control or direct the movement or use of the vessel.

(2) For vessels under paragraph (b) of this section, that—

(i) The aggregate book value of the vessels owned by that person and United States affiliates of that person does not exceed 10 percent of the aggregate book value of all assets owned by that person and its United States affiliates;

(ii) Not more than 10 percent of the aggregate revenues of that person and its United States affiliates is derived from the ownership, operation, or management of vessels;

(iii) At least 70 percent of the aggregate tonnage of all cargo carried by all vessels owned by that person and its United States affiliates and documented under 46 U.S.C. 12106 is qualified proprietary cargo;

(iv) Any cargo other than qualified proprietary cargo carried by all vessels owned by that person and its United States affiliates and documented under 46 U.S.C. 12106 consists of oil, petroleum products, petrochemicals, or liquefied natural gas;

(v) No vessel owned by that person or any of its United States affiliates and documented under 46 U.S.C. 12106 carries molten sulphur; and

(vi) That person owned one or more vessels documented under § 68.10 as of August 9, 2004.

(b) Paragraph (a)(2) of this section applies only to—

(1) A tank vessel having a tonnage of not less than 6,000 gross tons, as measured under 46 U.S.C. 14502 (or an alternative tonnage measured under 46 U.S.C. 14302 as prescribed under 46 U.S.C. 14104); or

(2) A towing vessel associated with a non-self-propelled tank vessel that meets the requirements of paragraph (b)(1) of this section, where the two vessels function as a single self-propelled vessel.

Note to § 68.65: The Secretary of Transportation may waive or reduce the qualified proprietary cargo requirement of § 68.65(a)(2)(iii) for a vessel if the person that owns the vessel (or, if the vessel is owned by a trust or similar arrangement, the beneficiary of the trust or similar arrangement) notifies the Secretary that circumstances beyond the direct control of the person that owns the vessel or its affiliates prevent, or reasonably threaten to prevent, the person that owns the vessel from satisfying this requirement, and the Secretary does not, with good cause, determine otherwise. The waiver or reduction applies during the period of time that the circumstances exist.

§ 68.70 Application procedure for vessels other than barges to be operated in coastwise trade without being documented.

(a) The person that owns the vessel (other than a barge under § 68.75) and that seeks a coastwise endorsement under § 68.60 must submit the following to the National Vessel Documentation Center:

(1) Application for Initial Issue, Exchange, or Replacement of Certificate of Documentation; or Redocumentation (form CG–1258);

(2) Title evidence, if applicable;

(3) Mortgagee consent on form CG–4593, if applicable;

(4) If the application is for replacement of a mutilated document or for exchange of documentation, the outstanding Certificate of Documentation;

(5) The certification required by § 68.65(a)(1) or, if a vessel under § 68.65(b), the certification required by § 68.65(a)(2);

(6) A certification in the form of an affidavit and, if requested by the Director, National Vessel Documentation Center, supporting documentation establishing the following facts with respect to the transaction from an individual who is authorized to provide certification on behalf of the person that owns the vessel and who is an officer in a corporation, a partner in a partnership, a member of the board of managers in a limited liability company, or their equivalent. The certificate must certify that the person that owns the vessel has transferred to a qualified United States citizen under 46 U.S.C. app. 802 full possession, control, and command of the U.S.-built vessel through a demise charter in which the demise charterer is considered the owner *pro hac vice* during the term of the charter.

(7) A copy of the charter, which must provide that the charterer is deemed to be the owner *pro hac vice* for the term of the charter.

(b) The charterer must submit the following to the National Vessel Documentation Center:

(1) A certificate certifying that the charterer is a citizen of the United States for the purpose of engaging in the coastwise trade under 46 U.S.C. app. 802.

(2) Detailed citizenship information in the format of form CG–1258, Application for Documentation, section G, citizenship. The citizenship information may be attached to the form CG–1258 that is submitted under paragraph (a)(1) of this section and must be signed by, or on behalf of, the charterer.

(c) Whenever a charter submitted under paragraph (a)(7) of this section is amended, the vessel owner must file a copy of the amendment with the Director, National Vessel Documentation Center, within 10 days after the effective date of the amendment.

(d) Whenever the charterer of a vessel under paragraph (a) of this section enters into a sub-charter that is a demise charter with another person for the use of the vessel, the charterer must file a copy of the sub-charter and amendments to the sub-charter with the Director, National Vessel Documentation Center, within 10 days after the effective date of the sub-charter and the sub-charterer must provide detailed citizenship information in the format of form CG–1258, Application for Documentation, section G, citizenship.

(e) Whenever the charterer of a vessel under paragraph (a) of this section enters into a sub-charter other than a demise charter with another person for the use of the vessel, the charterer must file a copy of the sub-charter and amendments to the sub-charter with the Director, National Vessel Documentation Center, within 10 days after a request by the Director to do so.

(f) A person that submits a false certification under this section is subject to penalty under 46 U.S.C. 12122 and 18 U.S.C. 1001.

§ 68.75 Application procedure for barges to be operated in coastwise trade without being documented.

(a) The person that owns a barge qualified to engage in coastwise trade must submit the following to the National Vessel Documentation Center:

(1) The certification required by § 68.65(a)(1) or (a)(2).

(2) A certification in the form of an affidavit and, if requested by the Director, National Vessel Documentation Center, supporting documentation establishing the following facts with respect to the transaction from an individual who is authorized to provide certification on behalf of the person that owns the barge and who is an officer in a corporation, a partner in a partnership, a member of the board of managers in a limited liability company, or their equivalent. The certificate must certify the following:

(i) That the person that owns the barge is organized under the laws of the United States or a State.

(ii) That the person that owns the barge has transferred to a qualified United States citizen under 46 U.S.C. app. 802 full possession, control, and command of the U.S.-built barge through a demise charter in which the demise charterer is considered the owner *pro hac vice* during the term of the charter.

(iii) That the barge is qualified to engage in the coastwise trade and that it is owned by a person eligible to own vessels documented under 46 U.S.C. 12102(e).

(3) A copy of the charter, which must provide that the charterer is deemed to be the owner *pro hac vice* for the term of the charter.

(b) The charterer must submit the following to the National Vessel Documentation Center:

(1) A certificate certifying that the charterer is a citizen of the United States for engaging in the coastwise trade under 46 U.S.C. app. 802.

(2) Detailed citizenship information in the format of form CG–1258, Application for Documentation, section G, citizenship. The citizenship information must be signed by, or on behalf of, the charterer.

(c) Whenever a charter under paragraph (a) of this section is amended, the barge owner must file a copy of the amendment with the Director, National Vessel Documentation Center, within 10 days after the effective date of the amendment.

(d) Whenever the charterer of a barge under paragraph (a) of this section enters into a sub-charter that is a demise charter with another person for the use of the barge, the charterer must file a copy of the sub-charter and amendments to the sub-charter with the Director, National Vessel Documentation Center, within 10 days after the effective date of the sub-charter and the sub-charterer must provide detailed citizenship information in the format of form CG–1258, Application for Documentation, section G, citizenship.

(e) Whenever the charterer of a barge under paragraph (a) of this section enters into a sub-charter other than a demise charter with another person for the use of the barge, the charterer must file a copy of the sub-charter and amendments to the sub-charter with the Director, National Vessel Documentation Center, within 10 days after a request by the Director to do so.

(f) A person that submits a false certification under this section is subject to penalty under 46 U.S.C. 12122 and 18 U.S.C. 1001.

§ 68.80 Invalidation of a coastwise endorsement.

In addition to the events in § 67.167(c)(1) through (c)(9) of this chapter, a Certificate of Documentation together with a coastwise endorsement under this subpart becomes invalid when—

(a) The owner fails to make the certification required by § 68.65 or ceases to meet the requirements of the certification on file;

(b) The demise charter expires or is transferred to another charterer; or

(c) The citizenship of the charterer or sub-charterer changes to the extent that they are no longer qualified for a coastwise endorsement.

22. Add new subpart D, consisting of §§ 68.100 through 68.111, to read as follows:

Subpart D—Vessels With a Coastwise Endorsement Issued Before August 9, 2004, and Their Replacements That Are Demised Chartered to Coastwise-Qualified Citizens

Subpart D—Vessels With a Coastwise Endorsement Issued Before August 9, 2004, and Their Replacements That Are Demised Chartered to Coastwise-Qualified Citizens

§ 68.100 Purpose and applicability.

(a) This subpart contains requirements for the documentation of U.S.-built vessels in the coastwise trade that were granted special rights under the Coast Guard and Maritime Transportation Action of 2004 (Pub. L. 108–293).

(b) This subpart applies to—

(1) A vessel under a demise charter that was eligible for, and received, a document with a coastwise endorsement under § 67.19 of this chapter and 46 U.S.C. 12106(e) before August 9, 2004;

(2) A barge deemed eligible under 46 U.S.C. 12106(e) and 12110(b) to operate in coastwise trade without being documented before August 9, 2004; and

(3) A replacement vessel of a similar size and function for any vessel under paragraphs (b)(1) through (b)(3) of this section.

(c) Except for vessels under paragraph (d) of this section, this subpart applies to a certificate of documentation, or renewal of one, endorsed with a coastwise endorsement for a vessel under 46 U.S.C. 12106(e) or a replacement vessel of a similar size and function that was issued before August 9, 2004, as long as the vessel is owned by the person named in the certificate, or by a subsidiary or affiliate of that person, and the controlling interest in the owner has not been transferred to a person that was not an affiliate of the owner as of August 9, 2004.

(d) With respect to offshore supply vessels with a certificate of documentation endorsed with a coastwise endorsement as of August 9, 2004, this subpart applies until August 9, 2007. On and after August 9, 2007, subpart C of this part applies to these vessels.

§ 68.103 Definitions.

In addition to the terms defined in § 67.3 of this chapter, as used in this subpart—

Affiliate means a person that is less than 50 percent owned or controlled by another person.

Group means the person that owns a vessel, the parent of that person, and all subsidiaries and affiliates of the parent of that person.

Offshore supply vessel means a motor vessel of more than 15 gross tons but less than 500 gross tons as measured under 46 U.S.C. 14502, or an alternate tonnage measured under 46 U.S.C. 14302 as prescribed under 46 U.S.C. 14104, that regularly carries goods, supplies, individuals in addition to the crew, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources.

Operation or management of vessels means all activities related to the use of vessels to provide services. These activities include ship agency; ship brokerage; activities performed by a vessel operator or demise charterer in exercising direction and control of a vessel, such as crewing, victualing, storing, and maintaining the vessel and ensuring its safe navigation; and activities associated with controlling the use and employment of the vessel under a time charter or other use agreement. It does not include activities directly associated with making financial investments in vessels or the receipt of earnings derived from these investments.

Parent means any person that directly or indirectly owns or controls at least 50 percent of another person. If an owner's parent is directly or indirectly controlled at least 50 percent by another person, that person is also a parent of the owner. Therefore, an owner may have multiple parents.

Person means an individual; corporation; partnership; limited liability partnership; limited liability company; association; joint venture; trust arrangement; and the government of the United States, a State, or a political subdivision of the United States or a State; and includes a trustee, beneficiary, receiver, or similar representative of any of them.

Primarily engaged in leasing or other financing transactions means lease financing, in which more than 50 percent of the aggregate revenue of a person is derived from banking, investing, lease financing, or other similar transactions.

Replacement vessel means—

(1) A temporary replacement vessel for a period not to exceed 180 days if the vessel described in § 68.50 is unavailable due to an act of God or a marine casualty; or

(2) A permanent replacement vessel if—

(i) The vessel described in § 68.50 is unavailable for more than 180 days due to an act of God or a marine casualty; or

(ii) A contract to purchase or construct a replacement vessel is executed not later than December 31, 2004.

Sub-charter means all types of charters or other contracts for the use of a vessel that are subordinate to a charter. The term includes, but is not

limited to, a demise charter, a time charter, a voyage charter, a space charter, and a contract of affreightment.

Subsidiary means a person at least 50 percent of which is directly or indirectly owned or controlled by another person.

§ 68.105 Eligibility of a vessel for a coastwise endorsement under this subpart.

(a) Except as under paragraphs (b) through (e) of this section, to be eligible for a coastwise endorsement under 46 U.S.C. 12106(e) and to operate in coastwise trade under 46 U.S.C. 12106(e) and 12110(b), a vessel under a demise charter must meet the following:

(1) The vessel is eligible for documentation under 46 U.S.C. 12102.

(2) The vessel is eligible for a coastwise endorsement under § 67.19(c) of this chapter, has not lost coastwise eligibility under § 67.19(d) of this chapter, and was financed with lease financing.

(3) The person that owns the vessel, the parent of that person, or a subsidiary of the parent of that person is primarily engaged in leasing or other financing transactions.

(4) The person that owns the vessel is organized under the laws of the United States or of a State.

(5) None of the following is primarily engaged in the direct operation or management of vessels:

(i) The person that owns the vessel.

(ii) The parent of the person that owns the vessel.

(iii) The group of which the person that owns the vessel is a member.

(6) The ownership of the vessel is primarily a financial investment without the ability and intent to directly or indirectly control the vessel's operations by a person not primarily engaged in the direct operation or management of vessels.

(7) The majority of the aggregate revenues of each of the following is not derived from the operation or management of vessels:

(i) The person that owns the vessel.

(ii) The parent of the person that owns the vessel.

(iii) The group of which the person that owns the vessel is a member.

(8) None of the following is primarily engaged in the operation or management of commercial, foreign-flag vessels used for the carriage of cargo for parties unrelated to the vessel's owner or charterer:

(i) The person that owns the vessel.

(ii) The parent of the person that owns the vessel.

(iii) The group of which the person that owns the vessel is a member.

(9) The person that owns the vessel has transferred to a qualified U.S. citizen under 46 U.S.C. app. 802 full possession, control, and command of the U.S.-built vessel through a demise charter in which the demise charterer is considered the owner *pro hac vice* during the term of the charter.

(10) The charterer must certify to the Director, National Vessel Documentation Center, that the charterer is a citizen of the United States for engaging in the coastwise trade under 46 U.S.C. app. 802.

(11) The demise charter is for a period of at least 3 years, unless a shorter period is authorized by the Director, National Vessel Documentation Center, under circumstances such as—

(i) When the vessel's remaining life would not support a charter of 3 years; or

(ii) To preserve the use or possession of the vessel.

(b) A vessel under a demise charter that was eligible for, and received, a document with a coastwise endorsement under § 67.19 of this chapter and 46 U.S.C. 12106(e) before February 4, 2004, may continue to operate under that endorsement on and after that date and may renew the document and endorsement if the certificate of documentation is not subject to—

(1) Exchange under § 67.167(b)(1) through (b)(3) of this chapter;

(2) Deletion under § 67.171(a)(1) through (a)(6) of this chapter; or

(3) Cancellation under § 67.173 of this chapter.

(c) A vessel under a demise charter that was constructed under a building contract that was entered into before February 4, 2004, in reliance on a letter ruling from the Coast Guard issued before February 4, 2004, is eligible for documentation with a coastwise endorsement under § 67.19 of this chapter and 46 U.S.C. 12106(e). The vessel may continue to operate under that endorsement and may renew the document and endorsement if the certificate of documentation is not subject to—

(1) Exchange under § 67.167(b)(1) through (b)(3) of this chapter;

(2) Deletion under § 67.171(a)(1) through (a)(6) of this chapter; or

(3) Cancellation under § 67.173 of this chapter.

(d) A barge deemed eligible under 46 U.S.C. 12106(e) and 12110(b) to operate in coastwise trade before February 4, 2004, may continue to operate in that trade after that date unless—

(1) The ownership of the barge changes in whole or in part;

(2) The general partners of a partnership owning the barge change by addition, deletion, or substitution;

(3) The State of incorporation of any corporate owner of the barge changes;

(4) The barge is placed under foreign flag;

(5) Any owner of the barge ceases to be a citizen within the meaning of part 67, subpart C, of this chapter; or

(6) The barge ceases to be capable of transportation by water.

(e) A barge under a demise charter that was constructed under a building contract that was entered into before February 4, 2004, in reliance on a letter ruling from the Coast Guard issued before February 4, 2004, is eligible to operate in coastwise trade under 46 U.S.C. 12106(e) and 12110(b). The barge may continue to operate in coastwise trade unless—

(1) The ownership of the barge changes in whole or in part;

(2) The general partners of a partnership owning the barge change by addition, deletion, or substitution;

(3) The State of incorporation of any corporate owner of the barge changes;

(4) The barge is placed under foreign flag;

(5) Any owner of the barge ceases to be a citizen within the meaning of subpart C of this part; or

(6) The barge ceases to be capable of transportation by water.

§ 68.107 Application procedure for vessels other than barges to be operated in coastwise trade without being documented.

(a) In addition to the items under § 67.141 of this chapter, the person that owns the vessel (other than a barge under § 68.109) and that seeks a coastwise endorsement under this subpart must submit the following to the National Vessel Documentation Center:

(1) A certification in the form of an affidavit and, if requested by the Director, National Vessel Documentation Center, supporting documentation establishing the following facts with respect to the transaction from an individual who is authorized to provide certification on behalf of the person that owns the vessel and who is an officer in a corporation, a partner in a partnership, a member of the board of managers in a limited liability company, or their equivalent. The certificate must certify the following:

(i) That the person that owns the vessel, the parent of that person, or a subsidiary of a parent of that person is primarily engaged in leasing or other financing transactions.

(ii) That the person that owns the vessel is organized under the laws of the United States or a State.

(iii) That none of the following is primarily engaged in the direct operation or management of vessels:

(A) The person that owns the vessel.

(B) The parent of the person that owns the vessel.

(C) The group of which the person that owns the vessel is a member.

(iv) That ownership of the vessel is primarily a financial investment without the ability and intent to directly or indirectly control the vessel's operations by a person not primarily engaged in the direct operation or management of vessels.

(v) That the majority of the aggregate revenues of each of the following is not derived from the operation or management of vessels:

(A) The person that owns the vessel.

(B) The parent of the person that owns the vessel.

(C) The group of which the person that owns the vessel is a member.

(vi) That none of the following is primarily engaged in the operation or management of commercial, foreign-flag vessels used for the carriage of cargo for parties unrelated to the vessel's owner or charterer:

(A) The person that owns the vessel.

(B) The parent of the person that owns the vessel.

(C) The group of which the person that owns the vessel is a member.

(vii) That the person that owns the vessel has transferred to a qualified United States citizen under 46 U.S.C. app. 802 full possession, control, and command of the U.S.-built vessel through a demise charter in which the demise charterer is considered the owner *pro hac vice* during the term of the charter.

(viii) That the vessel is financed with lease financing.

(2) A copy of the charter, which must provide that the charterer is deemed to be the owner *pro hac vice* for the term of the charter.

(b) The charterer must submit the following to the National Vessel Documentation Center:

(1) A certificate certifying that the charterer is a citizen of the United States for the purpose of engaging in the coastwise trade under 46 U.S.C. app. 802.

(2) Detailed citizenship information in the format of form CG–1258, Application for Documentation, section G, citizenship. The citizenship information may be attached to the form CG–1258 that is submitted under § 67.141 of this chapter and must be signed by, or on behalf of, the charterer.

(c) Whenever a charter under paragraph (a) of this section is amended, the vessel owner must file a copy of the amendment with the Director, National Vessel Documentation Center, within 10 days after the effective date of the amendment.

(d) Whenever the charterer of a vessel under paragraph (a) of this section enters into a sub-charter that is a demise charter with another person for the use of the vessel, the charterer must file a copy of the sub-charter and amendments to the sub-charter with the Director, National Vessel Documentation Center, within 10 days after the effective date of the sub-charter and the sub-charterer must provide detailed citizenship information in the format of form CG–1258, Application for Documentation, section G, citizenship.

(e) Whenever the charterer of a vessel under paragraph (a) of this section enters into a sub-charter other than a demise charter with another person for the use of the vessel, the charterer must file a copy of the sub-charter and amendments to the sub-charter with the Director, National Vessel Documentation Center, within 10 days after a request by the Director to do so.

(f) A person that submits a false certification under this section is subject to penalty under 46 U.S.C. 12122 and 18 U.S.C. 1001.

§ 68.109 Application procedure for barges to be operated in coastwise trade without being documented.

(a) The person that owns a barge qualified to engage in coastwise trade under the lease-financing provisions of 46 U.S.C. 12106(e) must submit the following to the National Vessel Documentation Center:

(1) A certification in the form of an affidavit and, if requested by the Director, National Vessel Documentation Center, supporting documentation establishing the following facts with respect to the transaction from an individual who is authorized to provide certification on behalf of the person that owns the barge and who is an officer in a corporation, a partner in a partnership, a member of the board of managers in a limited liability company, or their equivalent. The certificate must certify the following:

(i) That the person that owns the barge, the parent of that person, or a subsidiary of the parent of that person is primarily engaged in leasing or other financing transactions.

(ii) That the person that owns the barge is organized under the laws of the United States or a State.

(iii) That none of the following is primarily engaged in the direct operation or management of vessels:

(A) The person that owns the barge.

(B) The parent of the person that owns the barge.

(C) The group of which the person that owns the barge is a member.

(iv) That ownership of the barge is primarily a financial investment without the ability and intent to directly or indirectly control the barge's operations by a person not primarily engaged in the direct operation or management of the barge.

(v) That the majority of the aggregate revenues of each of the following is not derived from the operation or management of vessels:

(A) The person that owns the barge.

(B) The parent of the person that owns the barge.

(C) The group of which the person that owns the barge is a member.

(vi) That none of the following is primarily engaged in the operation or management of commercial, foreign-flag vessels used for the carriage of cargo for parties unrelated to the vessel's owner or charterer:

(A) The person that owns the barge.

(B) The parent of the person that owns the barge.

(C) The group of which the person that owns the barge is a member.

(vii) That the person that owns the barge has transferred to a qualified United States citizen under 46 U.S.C. app. 802 full possession, control, and command of the U.S.-built barge through a demise charter in which the demise charterer is considered the owner *pro hac vice* for the term of the charter.

(viii) That the barge is qualified to engage in the coastwise trade and that it is owned by a person eligible to own vessels documented under 46 U.S.C. 12102(e).

(ix) That the barge is financed with lease financing.

(2) A copy of the charter, which must provide that the charterer is deemed to be the owner *pro hac vice* for the term of the charter.

(b) The charterer must submit the following to the National Vessel Documentation Center:

(1) A certificate certifying that the charterer is a citizen of the United States for engaging in the coastwise trade under 46 U.S.C. app. 802.

(2) Detailed citizenship information in the format of form CG–1258, Application for Documentation, section G, citizenship. The citizenship information must be signed by, or on behalf of, the charterer.

(c) Whenever a charter under paragraph (a) of this section is amended, the barge owner must file a copy of the amendment with the Director, National Vessel Documentation Center, within 10

days after the effective date of the amendment.

(d) Whenever the charterer of a barge under paragraph (a) of this section enters into a sub-charter that is a demise charter with another person for the use of the barge, the charterer must file a copy of the sub-charter and amendments to the sub-charter with the Director, National Vessel Documentation Center, within 10 days after the effective date of the sub-charter and the sub-charterer must provide detailed citizenship information in the format of form CG–1258, Application for Documentation, section G, citizenship.

(e) Whenever the charterer of a barge under paragraph (a) of this section enters into a sub-charter other than a demise charter with another person for the use of the barge, the charterer must file a copy of the sub-charter and amendments to the sub-charter with the Director, National Vessel Documentation Center, within 10 days after a request by the Director to do so.

(f) A person that submits a false certification under this section is subject to penalty under 46 U.S.C. 12122 and 18 U.S.C. 1001.

§ 68.111 Invalidation of a coastwise endorsement.

(a) In addition to the events in § 67.167(c)(1) through (c)(9) of this chapter, a Certificate of Documentation together with a coastwise endorsement in effect before February 4, 2004, becomes invalid when—

(1) The demise charter expires or is transferred to another charterer;

(2) The citizenship of the charterer or sub-charterer changes to the extent that they are no longer qualified for a coastwise endorsement; or

(3) Neither the person that owns the vessel, nor the parent of that person, nor a subsidiary of the parent of that person is primarily engaged in leasing or other financing transactions.

(b) In addition to the events in § 67.167(c)(1) through (c)(9) of this chapter, a Certificate of Documentation together with a coastwise endorsement in effect on or after February 4, 2004, and before August 9, 2004, becomes invalid when—

(1) The demise charter expires or is transferred to another charterer;

(2) The citizenship of the charterer or sub-charterer changes to the extent that they are no longer qualified for a coastwise endorsement;

(3) Neither the person that owns the vessel, nor the parent of that person, nor any subsidiary of the parent of that person is primarily engaged in leasing or other financing transactions;

(4) The majority of the aggregate revenues of at least one of the following is derived from the operation or management of vessels:

(i) The person that owns the vessel.

(ii) The parent of the person that owns the vessel.

(iii) The group of which the person that owns the vessel is a member; or

(5) At least one of the following is primarily engaged in the operation or management of commercial, foreign-flag vessels used for the carriage of cargo for parties unrelated to the vessel's owner or charterer:

(i) The person that owns the vessel.

(ii) The parent of the person that owns the vessel.

(iii) The group of which the person that owns the vessel is a member.

Dated: February 7, 2006.

T.H. Collins,

Admiral, Coast Guard Commandant.

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GENERAL SERVICES ADMINISTRATION

48 CFR Chapter 5

[GSAR ANPR 2006–N01]

RIN 3090–00XX

General Services Administration Acquisition Regulation; GSAR Revision Initiative

AGENCY: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Advance notice of proposed rulemaking with request for comments.

SUMMARY: The General Services Administration (GSA) is requesting comments from both Government and industry on areas in which the General Services Administration Acquisition Regulation (GSAR) can be revised to improve clarity and simplify procedures.

DATES: Interested parties should submit comments in writing on or before April 17, 2006 to be considered in the formulation of a proposed rule.

ADDRESSES: Submit written comments identified by GSAR ANPR2006–N01, by using any of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

• Agency Web Site: *http://www.acqnet.gov/GSAM/gsamproposed.html.* Click on the GSAR case number to submit comments.

• E-mail: gsaranpr.2006–N01@gsa.gov. Include GSAR ANPR 2006–N01 in the subject line of the message.

• Fax: 202–501–4067.

• Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405. Instructions: Please submit comments only and cite GSAR ANPR 2006–N01 in all correspondence related to this case. All comments received will be posted without change to *http://www.acqnet.gov/GSAM/gsamcomments.html*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mrs. Althea Kireilis at 202–208–4724. Please cite GSAR ANPR 2006–N01 notice on GSAR Revision Initiative.

SUPPLEMENTARY INFORMATION:

Background

GSA is beginning the review and update of the General Services Administration Acquisition Regulation (GSAR). The GSAR is the regulatory part of the General Services Administration Acquisition Manual (GSAM). The GSAM contains both regulatory and non-regulatory acquisition guidance. The GSAR contains GSA's agency acquisition policies and practices, contract clauses, solicitation provisions, and forms that control the relationship between GSA and contractors and prospective contractors. The GSAM can be found online at *www.acqnet.gov/GSAM/gsam.html.* The regulatory parts making up the GSAR are the shaded parts of the document at this site. In this ANPR, GSA is seeking comments on the regulatory, or shaded parts, only.

Revisions to the GSAR are necessary to maintain consistency with the FAR, and to implement streamlined and innovative acquisition procedures that contractors, offerors and GSA contracting personnel can utilize when entering into and administering contractual relationships.

In this effort, GSA is asking industry and other interested parties, including Government personnel, to submit suggestion on which parts of the GSAR—

•Should be clarified to provide consistency with the FAR;

• Should be eliminated because they duplicate the FAR or create inconsistencies within the GSAR;

• Have inappropriate references listed to indicate the basis for the regulation;

• Have become irrelevant because of changes in technology or business processes;

• Place unnecessary administrative burdens on contractors and the Government;

• Can be streamlined or simplified;

• Need to be revised to provide new and/or augmented coverage; and

• Unnecessarily impose an adverse significant economic impact on a substantial number of small entities.

Interested parties are requested to provide a rationale for their recommendation and, if possible, suggested language or examples.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Dated: February 10, 2006.

Roger D. Waldron,

Acting Senior Procurement Executive, General Services Administration.

[FR Doc. E6–2185 Filed 2–14–06; 8:45 am]

BILLING CODE 6820–EP–S

Notices

Federal Register
Vol. 71, No. 31
Wednesday, February 15, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of a Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation (ACHP) will meet on Thursday, February 16, 2006. The meeting will be held in Room M–09 at the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC, beginning at 9:30 a.m.

The ACHP was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) to advise the President and Congress on national historic preservation policy and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The ACHP's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Defense, and Transportation; the Administrators of the Environmental Protection Agency and General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native American; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome
II. Chairman's Awards Presentation
III. *Preserve America* Program Status Report
IV. Report of the Preservation Initiatives Committee
  A. Heritage Tourism Issues
  B. Legislation
V. Report of the Federal Agency Programs Committee
  A. ACHP Report to the President under Executive Order 13287
  B. Hurricane Katrina Recovery Efforts
  C. Agency Program Issues
  D. Section 106 Case Update
VI. Report of the Communications, Education, and Outreach Committee
  A. 40th Anniversary of the NHPA and the ACHP
VII. Report of the Native American Advisory Group
IX. Report of the Affordable Housing and Historic Preservation Task Force
X. Report of the Base Realignment and Closure Task Force
XI. Chairman's Report
  A. ACHP Alumni Foundation
  B. Legislative Issues
  1. ACHP Reauthorization Legislation
XII. Executive Director's Report
  A. OFAP Realignment
  B. FY 2007 Budget Request
XIII. New Business
XIV. Adjourn

Note: The meetings of the ACHP are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Room 809, Washington, DC, 202–606–8503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., #809, Washington, DC 20004.

Dated: February 9, 2006.

John M. Fowler,

Executive Director.

[FR Doc. 06–1373 Filed 2–14–06; 8:45 am]

BILLING CODE 4310–K6–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 10, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Research Service

Title: Information Collection For Document Delivery Services.

OMB Control Number: 0518–0027.

Summary of Collection: The National Agricultural Library (NAL) accepts requests from libraries and other organizations in accordance with the national and international interlibrary loan code and guidelines. In its national role, NAL collects and supplies copies or loans of agricultural materials not found elsewhere. 7 U.S.C. 3125a and 7 CFR part 505 gives NAL the authority to collect this information. NAL provides photocopies and loans of materials directly to USDA staff, other Federal agencies, libraries and other institutions, and indirectly to the public through their libraries. The Library charges for some of these activities

through a fee schedule. In order to fill a request for reproduction or loan of items the library must have the name, mailing address, phone number, and patron ID number of the respondent initiating the request, and depending on the method of delivery, may require a fax number, e-mail address, or Ariel IP address. The collected information is used to deliver the material to the respondent, bill for and track payment of applicable fees, monitor the return to NAL of loaned material, identify and locate the requested material in NAL collections, and determine whether the respondent consents to the fees charged by NAL.

Need and Use of the Information: The NAL document delivery staff uses the information collected to identify the protocol for processing the request. The information collected determines whether the respondent is charged or exempt from any charges and what process the recipient uses to make payment if the request is chargeable. The staff also uses the information provided to process/package the reproduction or loan for delivery. Without the requested information NAL has no way to locate and deliver the loan or reproduction to the respondent, and thus cannot meet its mandate to supply agricultural material.

Description of Respondents: Federal Government; Not-for-profit institutions; State, Local or Tribal Government; Business or other for-profit.

Number of Respondents: 2100.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 525.

Agricultural Research Service

Title: Meeting the Information Requirements of the Animal Welfare Act Workshop Registration Form.

OMB Control Number: 0518–0033.

Summary of Collection: The U.S. Department of Agriculture, National Agricultural Library (NAL), Animal Welfare Information Center conducts a workshop titled ''Meeting the Information Requirements of the Animal welfare Act''. The registration form collects information from interested parties necessary to register them for the workshop. The information includes: workshop data preferences, signature, name, title, organization name, mailing address, phone and fax numbers and e-mail address. The information will be collected using online and printed versions of the form. Also forms can be fax or mailed.

Need and Use of the Information: NAL will collect information to register participants, contact them regarding schedule changes, control the number of participants due to limited resources and training space, and compile and customize class materials to meet the needs of the participants. Failure to collect the information would prohibit the delivery of the workshop and significantly inhibit NAL's ability to provide up-to-date information on the requirements of the Animal Welfare Act.

Description of Respondents: Not-for-Profit Institutions; Business or Other for-profit; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 100.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 8.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–2103 Filed 2–14–06; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Intergovernmental Advisory Committee Meeting, Northwest Forest Plan

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernmental Advisory Committee (IAC), Northwest Forest Plan (NWFP), has scheduled a meeting on March 8, 2006 from 8:30 a.m. to 3:30 p.m. at the Red Lion Hotel, in the Broadway/St. Johns Conference rooms, 1021 NE Grand Ave., Portland, OR 97232, 503–235–2100. The purpose of the meeting is to review progress on addressing key findings and trends from the April 19–20, 2005 *Science and the Northwest Forest Plan, Knowledge Gained Over a Decade* conference hosted by the USDA, Forest Service, Pacific Northwest Research Station, and to collect advice regarding the implementation improvement strategies being drafted.

The meeting is open to the public and fully accessible for people with disabilities. A 10-minute time slot is reserved for public comments at 8:50 a.m. Interpreters are available upon request at least 10 days prior to the meeting. Written comments may be submitted for the meeting record. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be directed to Kath Collier, Management Analyst, Regional Ecosystem Office, 333 SW First Avenue, P.O. Box 3623, Portland, OR 97208 (telephone: 503–808–2165).

Dated: February 8, 2006.

Anne Badgley,

Designated Federal Official.

[FR Doc. E6–2140 Filed 2–14–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35,as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by April 17, 2006.

FOR FURTHER INFORMATION CONTACT: Richard C. Annan, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5181, South Building, Washington, DC 20250–1522. Telephone: (202) 720–0784. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for reinstatement.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate

automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Richard C. Annan, Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–8435.

Title: Request for Approval to Sell Capital Assets.

OMB Control Number: 0572–0020.

Type of Request: Extension of a currently approved collection.

Abstract: A borrower's assets provide the security for a government loan. The selling of assets reduces the security and increases the risk to the government. RUS Form 369 allows the borrower to seek agency permission to sell some of its assets. The form collects detailed information regarding the proposed sales of a portion of the borrower's systems. RUS electric utility borrowers complete this form to request RUS approval in order to sell capital assets when the fair market value exceeds 10 percent of the borrower's net utility plant.

Estimate of Burden: Public Reporting burden for this collection of information is estimated to average 3 hours per response.

Respondents: Not-for-profit institutions; Business or other for profit.

Estimated Number of Respondents: 5.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 15 hours.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, at (202) 720–7853. FAX: (202) 720–8435.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: February 6, 2006.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. E6–2096 Filed 2–14–06; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on the following information collections for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by April 17, 2006.

FOR FURTHER INFORMATION CONTACT: Richard C. Annan, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5818, South Building, Washington, DC 20250–1522. Telephone: (202) 720–0784. Fax: (202) 720–8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies information collections that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology. Comments may be sent to Richard C. Annan, Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. Fax: (202) 720–0784.

Title: Telecommunications Field Trials.

OMB Control Number: 0572–0133.

Type of Request: Extension of a currently approved collection.

Abstract: To protect the equity of loans it makes, RUS Telecommunications Program establishes the minimum acceptable performance criteria for materials and equipment to be employed on telecommunication systems financed by RUS. These specifications cover a variety of materials and equipment, ranging from multipair cables for direct burial in the earth, to highly sophisticated, computerized central office digital switches. Manufacturers wishing to sell their products to RUS borrowers, request RUS consideration for acceptance of their products and submit data demonstrating their products' compliance with RUS specifications and that the products are otherwise acceptable for use on rural telecommunications systems. The review and determination of product acceptability is made to help assure that the products will perform properly and provide service lives that assure reliable revenue incomes and repayment of RUS loans funds in a manner consistent with the terms and conditions of the RUS loan. Unacceptable products may fail prematurely and interrupt service, require costly replacements, and reduce revenues. Without this collection, RUS has no means of determining the acceptability of advanced technology in a manner that is timely enough for RUS borrowers to take advantage of the improved benefits and promise that such products may provide for rural America.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3 hours per response.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents: 4.

Estimated Number of Responses per Respondent: 6.

Estimated Total Annual Burden on Respondents: 72 hours.

Dated: February 6, 2006.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. E6–2107 Filed 2–14–06; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Hawai'i Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Hawai'i State Advisory Committee in the Western Region will convene at 1 p.m. (PDT) and adjourn at 2:30 p.m., Thursday, February 23, 2006. The purpose of the conference call is to plan future activities and discuss on-going projects.

This conference call is available to the public through the following call-in

number: 1–800–377–4872, access code number 47545752. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the provided call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over landline connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Thomas Pilla of the Western Regional Office, (213) 894–3437, by 3 p.m. on Wednesday, February 22, 2006.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC February 9, 2006.

Ivy L. Davis,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. E6–2132 Filed 2–14–06; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Nevada Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Nevada State Advisory Committee in the Western Region will convene at 11 a.m. (PDT) and adjourn at 12 p.m., Friday, February 24, 2006. The purpose of the conference call is to plan future activities and discuss on-going projects.

This conference call is available to the public through the following call-in number: 1–800–377–4872, access code number 47545756. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the provided call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over landline connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Thomas Pilla of the Western Regional Office, (213) 894–3437, by 3 p.m. on Thursday, February 23, 2006.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC February 9, 2006.

Ivy L. Davis,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. E6–2133 Filed 2–14–06; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Washington Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Washington State Advisory Committee in the Western Region will convene at 11 a.m. (PDT) and adjourn at 12 p.m., Wednesday, February 22, 2006. The purpose of the conference call is to plan future activities and discuss on-going projects.

This conference call is available to the public through the following call-in number: 1–800–377–4872, access code number 47545731. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the provided call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over landline connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Thomas Pilla of the Western Regional Office, (213) 894–3437, by 3 p.m. on Tuesday, February 21, 2006.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC February 9, 2006.

Ivy L. Davis,

Acting Chief, Regional Program Coordination Unit.

[FR Doc. E6–2131 Filed 2–14–06; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Technical Advisory Committee; Notice of Open Meeting

The Materials Technical Advisory Committee (MTAC) will meet on March 2, 2006, 10:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to advanced materials and related technology.

Agenda

1. Opening remarks and introductions.

2. Discussion of the legal requirements for the operation of a MTAC working group.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials to Yvette Springer at *Yspringer@bis.doc.gov.*

For more information contact Yvette Springer on (202) 482–4814.

Dated: February 9, 2006.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 06–1414 Filed 2–14–06; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 25, 2005, the Department of Commerce (''the Department'') published in the **Federal Register** a notice announcing the initiation of the 04–05 administrative

review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (''PRC''). *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 70 FR 61601 (October 25, 2005) (''*Initiation Notice*''). The period of review (''POR'') is September 1, 2004, to August 31, 2005.

This review is now being rescinded for China Kingdom Import & Export Co., Ltd., (aka China Kingdoma Import & Export Co., Ltd., aka Zhongda Import & Export Co., Ltd.) (China Kingdom), Jiangsu Hilong International Trading Company, Ltd. (Jiangsu Hilong), Qingdao Zhengri Seafood Co., Ltd. (Qingdao Zhengri), Weishan Zhenyu Foodstuff Co., Ltd. (Weishan Zhenyu), Yancheng Haiteng Aquatic Products & Foods Co., Ltd. (Yancheng Haiteng), Yancheng Yaou Seafood Co., Ltd. (Yancheng Yaou), and Ningbo Nanlian Frozen Foods Co., Ltd. (Ningbo Nanlian), because the requesting parties, the Crawfish Processors Alliance (Petitioners), the Louisiana Department of Agriculture and Forestry, and Bob Odom, Commissioner (collectively, the Domestic Interested Parties) and Ningbo Nanlian withdrew their requests in a timely manner.

EFFECTIVE DATE: February 15, 2006.

FOR FURTHER INFORMATION CONTACT: Scot Fullerton or Erin Begnal, AD/CVD Operations, Office 9, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 4003, Washington, DC 20230; telephone: (202) 482–1386 or (202) 482–1442, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 1997, the Department published in the **Federal Register** a final determination and antidumping duty order on freshwater crawfish tail meat from the PRC. *See Notice of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Freshwater Crawfish Tail Meat from the People's Republic of China*, 62 FR 41347 (August 1, 1997).

On September 1, 2005, the Department published a *Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 70 FR 52072. On September 30, 2005, the Petitioners requested, in accordance with section 751(a) of the Tariff Act of 1930, as amended, (''the Act'') and 19 CFR 351.213(b), that the Department conduct an administrative review of the antidumping duty order on freshwater crawfish tail meat from the PRC for several companies covering the period September 1, 2004, to August 31, 2005, including China Kingdom, Jiangsu Hilong, Qingdao Zhengri, Weishan Zhenyu, Yancheng Haiteng, Yancheng Yaou, and Ningbo Nanlian. In addition, Ningbo Nanlian also requested an administrative review of its entries for the POR.

On October 19, 2005, the Department initiated an administrative review of thirteen Chinese companies. *See Initiation Notice*. However, on January 23, 2006, the Petitioners filed a timely letter withdrawing their request for review of China Kingdom, Jiangsu Hilong, Qingdao Zhengri, Weishan Zhenyu, Yancheng Haiteng, Yancheng Yaou, and Ningbo Nanlian. In addition, Ningbo Nanlian filed its own letter in a timely manner, on January 23, 2006, withdrawing its request for an administrative review.

Rescission of Review

Pursuant to section 351.213(d)(1) of the Department's regulations, if a party that requests a review withdraws the request within ninety days of the date of publication of the notice of initiation of the requested review, the Secretary will rescind the review. The Petitioners and Ningbo Nanlian withdrew their requests for review in a timely manner, in accordance with 19 CFR 351.213(d)(1). Since the Petitioners were the only party to request an administrative review of China Kingdom, Jiangsu Hilong, Qingdao Zhengri, Weishan Zhenyu, Yancheng Haiteng, and Yancheng Yaou, and petitioners and Ningbo Nanlian both withdrew their requests for review of Ningbo Nanlian, we are rescinding this review of the antidumping duty order on freshwater crawfish tail meat from the PRC covering the period September 1, 2004, through August 31, 2005, with respect to China Kingdom, Jiangsu Hilong, Qingdao Zhengri, Weishan Zhenyu, Yancheng Haiteng, Yancheng Yaou, and Ningbo Nanlian.

Cash Deposit Requirements

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. For those companies for which this review has been rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2). The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of this notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751 and 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: February 8, 2006.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E6–2168 Filed 2–14–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–844]

Notice of Preliminary Affirmative Countervailing Duty Determination and Preliminary Negative Critical Circumstances Determination: Certain Lined Paper Products From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain lined paper products from India. For information on the estimated subsidy rates, see the ''Suspension of Liquidation'' section of this notice.

DATES: *Effective Date:* February 15, 2006.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, Maura Jeffords, or John

Conniff, Office of AD/CVD Operations Office 3, Import Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2209, (202) 482–3146, and (202) 482–1009, respectively.

SUPPLEMENTARY INFORMATION:

Case History

The petition in this investigation was filed on September 9, 2005, by the Association of American School Suppliers (Petitioner).[1] This investigation was initiated on September 29, 2005. *See Notice of Initiation of Countervailing Duty Investigations: Certain Lined Paper Products from India (C–533–844) and Indonesia (C–560–819)*, 70 FR 58690 (Oct. 7, 2005).

On October 20, 2005, Petitioner timely requested a 65-day postponement of the preliminary determination for this investigation.

Due to the large number of producers and exporters of lined paper products in India, we determined that it is not possible to investigate each producer or exporter individually and selected three producers/exporters of certain lined paper products: Aero Exports (Aero), Kejriwal Paper Limited (Kejriwal), and Navneet Publications (Navneet). *See* Memorandum from the Team, through Office Director Melissa Skinner, to Deputy Assistant Secretary Stephen J. Claeys: Lined Paper Products from India Respondent Selection or Aggregation, October 25, 2005. On October 25, 2005, we issued our initial questionnaire to the Government of India (GOI) and requested that the GOI forward the relevant sections of the initial questionnaire to the selected respondents.

On November 8, 2005, the Department extended the deadline for the preliminary determination by 65 days to no later than February 6, 2006, in accordance with section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act). *See Certain Lined Paper Products from India and Indonesia: Extension of Time Limit for Preliminary Determinations in the Countervailing Duty Investigations*, 70 FR 67668 (Nov. 8, 2005).

On November 28, 2005, the Department initiated a review on new subsidy allegations.[2] *See* Memorandum from the Team, through Program Manager Eric B. Greynolds, to Office Director Melissa G. Skinner: New Subsidy Allegations, November 28, 2005. On November 30, 2005, we issued a questionnaire regarding the newly alleged subsidies to the GOI. On November 28, 2005, Petitioner alleged that U.S. retailers of subject merchandise were in negotiations to import large volumes of subject merchandise prior to the Department's preliminary determination. Petitioner, therefore, requested that pursuant, to 19 CFR 351.206, the Department make an expedited finding that critical circumstances exist with respect to imports of lined paper products from India.

On November 30, 2005, the Department issued its New Subsidy Allegations questionnaire to the GOI. On December 15, 2005, the GOI submitted its response to our initial questionnaire. On December 16, 2005, Navneet submitted its response to our initial questionnaire. On December 19, 2005, Aero and Kejriwal submitted their responses to our initial questionnaire. On January 5, 2006, we issued a questionnaire regarding the new subsidy allegations to the three respondent companies. Between January 11 and January 25, 2006, we issued supplemental questionnaires to the three respondent companies. Between January 6 and January 31, 2006, the GOI and the three respondent companies submitted responses to the questionnaires regarding the new subsidy allegations and the subsequent supplemental questionnaires.

Scope of the Investigation

For scope information, see Appendix I.

Injury Test

Because India is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from India materially injure, or threaten material injury to, a U.S. industry. On October 31, 2005, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from India and Indonesia of subject merchandise. *See Certain Lined Paper School Supplies From China, India and Indonesia*, USITC Pub. 3811, Inv. Nos. 701–TA–442–443 and 731–TA–1095–1097, (Oct. 2005) (Prelim.).

Critical Circumstances

As stated above, Petitioner requested that, pursuant to 19 CFR 351.206, the Department make an expedited finding that critical circumstances exist with respect to imports of lined paper products from India. In order to evaluate Petitioner's critical circumstance allegation, we determined to monitor imports of paper from India and to request that U.S. Customs and Border Protection (CBP) compile information on an expedited basis regarding entries of Indian lined paper. We also requested shipment data for the relevant time periods from respondents. *See* Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, from Susan H. Kuhbach, Director, Office 1, Melissa G. Skinner, Director, Office 3, and Wendy J. Frankel, Director, Office 8, January 31, 2006. See also Respondents' Supplemental Questionnaire, January 24, 2006.

We have preliminarily determined that critical circumstances do not exist for subject imports of paper from India. *See* Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, from: Melissa G. Skinner, Director, Operations, Office 3: Preliminary Negative Critical Circumstances Determination, February 6, 2006 (publicly on file in room B–099 of the Central Records Unit (CRU) in the main building of the Commerce Department). Specifically, the Department found that the Petitioner's allegation does not in itself provide a sufficient factual basis for making an affirmative finding. The Department will continue to seek import data and will place any such relevant data on the record of the investigation for consideration by the Department in its final critical circumstances determination.

Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is April 1, 2004, through March 31, 2005, which corresponds to the most recently completed fiscal year for all of the respondents. *See* 19 CFR 351.204(b)(2).

Subsidies Valuation Information

Benchmarks for Loans and Discount Rate

Aero and Kejriwal reported using a rupee-denominated short-term loan program. For those programs requiring the application of a benchmark interest rate, 19 CFR 351.505(a)(1) provides a

[1] The petition and amendments were filed between September 9 and September 26, 2005. On September 21, 2005, the Department issued a memorandum clarifying that the official filing date of the petition was September 9, 2005. *See* Memorandum from the Team to Acting Deputy Assistant Secretary Barbara Tillman: Decision Memorandum Concerning Filing Date of Petition, Sept. 21, 2005.

[2] *See* Petitioner's New Subsidy Allegations Submission, Oct. 27, 2005.

preference for using an interest rate that the company could have obtained on a comparable loan in the commercial market. Aero provided company-specific information on its rupee-denominated short-term commercial loans outstanding during the POI. Thus, in accordance with 19 CFR 351.505(a)(3)(i), we are using these interest rates as company-specific benchmarks for purposes of calculating benefits arising to Aero from the rupee-denominated short-term loan programs we find countervailable. Kejriwal did not report any company-specific commercial loan information that could be evaluated for use as a benchmark. As a result, we used as our benchmark a national average rupee-denominated short-term interest rate for India, as reported in the International Monetary Fund's (IMF) publication *International Financial Statistics*.[3] Our reliance on interest rate information from the IMF is consistent with our approach in past Indian proceedings. *See Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 67 FR 34905 (May 16, 2002) (*PET Film*), and the accompanying Issues and Decision Memorandum, at ''Octroi Refund Scheme'' (*PET Film Decision Memo*).

Navneet reported using a dollar-denominated short-term loan program. Our practice when loans are denominated in a foreign currency, in accordance with 19 CFR 351.505(a)(2)(i), is to use a foreign currency benchmark. *See, e.g.*, Certain Pasta From Turkey: Final Results of Countervailing Duty Administrative Review, 66 FR 64398 (Dec. 13, 2001), and accompanying Issues and Decision Memorandum, at ''Benchmark Interest Rates for Short-term Loans.'' Pursuant to 19 CFR 351.505(a)(3)(i), in constructing our benchmark, we first examined whether Navneet received comparable commercial financing that was outstanding during the POI. Navneet reported several commercial U.S. dollar-denominated loans in the benchmark section of its initial questionnaire response. *See* Navneet's December 16, 2005, Questionnaire Response, at Exh. 7. However, 19 CFR 351.505(a)(2)(ii) states that the Department will not consider a loan provided by a government-owned special purpose bank to be a commercial loan for purposes of selecting a loan to compare with a government-provided loan. Based on the evidence regarding the loans in question reported by Navneet, we find that they constitute loans from a government-owned special purpose bank within the meaning of 19 CFR 351.505(a)(2)(ii) and, therefore, are not suitable for use as benchmarks. As a result, for Navneet, we used the dollar-denominated short-term interest rate for the United States reported in *International Financial Statistics* as our benchmark. For the final determination, we will continue to seek dollar-denominated benchmark loan information for short-term lending in India.

For those programs requiring a rupee-denominated discount rate or the application of a rupee-denominated, long-term benchmark interest rate, it is our practice to use as benchmarks company-specific, weighted-average interest rates of comparable commercial long-term, rupee-denominated loans that were actually obtained by the company. *PET Film Decision Memo*, at II.A.2 ''Benchmark for Loans and Discount Rate.'' If company-specific long-term loan data were not provided by the respondent company, we then look to use publicly available, published average long-term interest rates as benchmark interest rates. *Id.* If such long-term interest rate data is not available, we then use, as surrogates, other publicly available published interest rates applicable to the country under investigation.

In this investigation, Aero provided long-term rupee-denominated commercial loan information. Therefore, where possible, we used Aero's company-specific long-term loans for benchmark purposes. We did not use any long-term loans that had unpaid interest or principal payments because we do not consider such loans to be comparable loans under section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a)(2)(i).

For some years, Aero did not provide company-specific long-term loan data. Kejriwal and Navneet did not provide any company-specific long-term loan data. Pursuant to 19 CFR 351.505(a)(3)(ii), we used national average interest rates for those years in which the respondents did not report company-specific interest rates on comparable commercial loans. Because long-term publicly available interest rates were not available, we used national average interest rates for short-to-medium-term, rupee-denominated financing from private creditors in *International Financial Statistics*. This approach is consistent with the Department's practice. *See id.*; and *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from India*, 66 FR 49635 (Sept. 28, 2001) (*HRC Investigation*), and the accompanying Issues and Decision Memorandum at II.C. ''Benchmark for Loans and Discount Rate'' (*HRC Investigation Decision Memo*). We will continue to seek long-term benchmark interest rates for purposes of the final determination.

Allocation Period

Under 19 CFR 351.524(d)(2)(i), we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System, as updated by the Department of the Treasury. The presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets for the company or industry under investigation, and the party can establish that the difference between the company-specific or country-wide AUL for the industry under investigation is significant, pursuant to 19 CFR 351.524(d)(2)(ii). For assets used to manufacture products such as lined paper, the IRS tables prescribe an AUL of 13 years.

In their questionnaire responses, Aero, Kejriwal, and Navneet each stated that it would not attempt to rebut the regulatory presumption by meeting the criteria set forth in 19 CFR 351.524(d)(2)(iii) and calculating company-specific AULs. Thus, for each of the three respondent companies, we will use the IRS AUL of 13 years to allocate any non-recurring subsidies for purposes of this preliminary determination.

I. Programs Preliminarily Determined To Be Countervailable

A. GOI Programs

1. Pre- and Post-Shipment Export Financing

The Reserve Bank of India (RBI), through commercial banks, provides short-term pre-shipment export financing, or ''packing credits,'' to exporters. Upon presentation of a confirmed export order or letter of credit to a bank, companies may receive pre-shipment loans for working capital purposes. Exporters may also establish pre-shipment credit lines upon which they may draw as needed. Credit line limits are established by commercial banks based upon a company's creditworthiness and past export performance, and may be denominated

[3] We did not use the interest rate information the GOI provided in its December 15, 2005 questionnaire response because the information did not cover the POI.

either in Indian rupees or in foreign currency. Commercial banks extending export credit to Indian companies must, by law, charge interest on this credit at rates capped by the RBI. For post-shipment export financing, exporters are eligible to receive post-shipment short-term credit in the form of discounted trade bills or advances by commercial banks at preferential interest rates to finance the period between the date of shipment of exported merchandise and payment from export customers (''transit period'').

The Department has previously determined that this export financing is countervailable to the extent that the interest rates are set by the GOI and are lower than the rates exporters would have paid on comparable commercial loans. *See PET Film Decision Memo*, at II.A.1 ''Pre-Shipment and Post-Shipment Export Financing.'' Specifically, the Department determined that the GOI's issuance of financing at preferential rates constituted a financial contribution pursuant to section 771(5)(D)(i) of the Act. *Id.* The Department further determined that the interest savings under this program conferred a benefit pursuant to section 771(5)(E)(ii) of the Act. In addition, the Department determined this program, which is contingent upon exports, to be specific within the meaning of section 771(5A)(B) of the Act. *Id.* No new information or evidence of changed circumstances have been presented in this investigation to warrant reconsideration of this finding.

Aero reported its rupee-denominated, pre- and post-shipment export loans outstanding during the POI. Navneet reported its dollar-denominated, pre-shipment export loans outstanding during the POI. Kejriwal reported its rupee-denominated, pre-shipment export loans outstanding during the POI and provided information indicating the amount of rupee-denominated post-shipment financing the company had outstanding during the POI.

To calculate the benefit conferred by these pre-shipment and post-shipment loans, we compared the actual interest paid on the loans with the amount of interest that would have been paid at the benchmark interest rates. We used a rupee- or dollar-denominated benchmark, as appropriate (*see* ''Subsidies Valuation Information'' section above). Where the benchmark interest exceeds the actual interest paid, the difference constitutes the benefit. For pre-shipment loans, we calculated the company-specific program rates by dividing the benefit received by the company during the POI by the company's total exports during the POI.

Because post-shipment loans are granted for particular shipments, our practice is to treat them as tied to particular markets, in accordance with 19 CFR 351.525(b)(2). *See Preliminary Affirmative Countervailing Duty Determination and Alignment with Final Antidumping Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin from India*, 69 FR 52866, 52871 (Aug. 30, 2004). To calculate a company's subsidy rate for this program, we divide the benefit received by the company during the POI by the company's exports of subject merchandise to the United States during the POI.

For Kejriwal, we were able to conduct this calculation accordingly. Aero, however, appears to have reported its post-shipment loans for all shipments to all destinations. Therefore, for purposes of this preliminary determination, we did not apply our standard methodology. Rather, we divided the total benefit Aero received during the POI by Aero's total exports of all products to all destinations during the POI. At verification, we will examine the post-shipment loan data provided by Aero.

We preliminarily determine the countervailable subsidy rate under the pre-shipment export financing program for Aero to be 0.85 percent *ad valorem* during the POI, 0.66 percent *ad valorem* during the POI for Navneet, and 0.03 percent *ad valorem* during the POI for Kejriwal. We preliminarily determine the countervailable subsidy rate under the post-shipment export financing program for Aero to be 0.04 percent *ad valorem* during the POI and 0.77 percent *ad valorem* during the POI for Kejriwal.

2. Export Promotion Capital Goods Scheme (EPCGS)

The EPCGS provides for a reduction or exemption of customs duties and an exemption from excise taxes on imports of capital goods. Under this program, producers may import capital equipment at five percent customs duty, subject to an export obligation equal to eight times the duty saved to be fulfilled over a period of eight years (12 years where the CIF value is Rs. 100 Crore [4]) from the date the license was issued. For failure to meet the export obligation, a company is subject to payment of all or part of the duty reduction, depending on the extent of the export shortfall, plus penalty interest.

In prior proceedings, we determined that import duty reductions provided under the EPCGS constituted a countervailable export subsidy. *See, e.g., PET Film Decision Memo*, at section II.A.4 ''EPCGS.'' Specifically, the Department found that under the EPCGS program, the GOI provides a financial contribution under section 771(5)(D)(ii) of Act, in the form of revenue foregone that otherwise would be due. The tax savings confer a benefit, as defined by section 771(5)(E) of the Act. Also, this program is specific under section 771(5A)(B) of the Act because it is contingent upon export performance. No new information or evidence of changed circumstances has been provided with respect to this program. Therefore, we continue to find that import duty reductions provided under the EPCGS are countervailable export subsidies.

Aero, Navneet, and Kejriwal reported that they received import duty deductions under the EPCGS program. We have determined the benefit under this program in accordance with our findings and treatment in other Indian CVD proceedings. *Id.* at cmt. 5; and *HRC Investigation Decision Memo*, at section I.E ''Export Promotion of Capital Goods Scheme (EPCGS).'' Under the Department's approach, there are two types of benefits under the EPCGS program. The first benefit is the amount of unpaid duties that would have to be paid to the GOI if the export requirements are not met. The repayment of this liability is contingent on subsequent events, and in such instances, it is the Department's practice to treat any balance on an unpaid liability as an interest-free loan. *See* 19 CFR 351.505(d)(1).

Because Aero, Navneet, and Kejriwal had not yet met their export obligations specified in their EPCGS licenses by the end of the POI, we preliminarily determine that the companies had outstanding contingent liabilities during the POI. We further determine that the amount of the contingent liability to be treated as an interest-free loan is the amount of the import duty reduction or exemption for those EPCGS licenses for which Aero, Navneet, and Kejriwal applied but, as of the end of the POI, had not received a waiver of their obligations to repay the duties from the GOI.

Accordingly, for those unpaid duties for which Aero, Navneet, and Kejriwal have yet to fulfill their export obligations, we determine the benefit to be the interest that they would have paid during the POI had they borrowed the full amount of the duty reduction at the time of import. Pursuant to 19 CFR 351.505(d)(1), we used a long-term interest rate as our benchmark to calculate the benefit of a contingent

[4] A crore is equal to 10,000,000 rupees.

liability interest-free loan because the event upon which repayment of the duties depends (*i.e.*, the date of expiration of the time period for Aero, Navneet, and Kejriwal to fulfill their export commitments) occurs at a point in time more than one year after the date the capital goods were imported. Specifically, we used the long-term benchmark interest rate for Aero, Navneet, and Kejriwal, as described in the ''Subsidies Valuation'' section, *supra*. The rate used corresponded to the year in which the companies imported the item under the program. Consistent with our policy, absent acknowledgment in the form of an official letter from the GOI that the liability has been eliminated, we continue to treat benefits of these licenses as contingent liabilities. *See, e.g., See Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India*, 69 FR 26549 (May 13, 2004) (*HRC First Review Final*), and accompanying Issues and Decision Memorandum, at II.A.2 ''Export Promotion of Capital Goods Scheme (EPCGS)'' (*HRC First Review Decision Memo*).

The second benefit is the waiver of duty on imports of capital equipment covered by those EPCGS licenses for which export requirements have been met. Navneet reported that it imported machinery under the EPCGS in the years prior to the POI and during the POI. Upon importation under these licenses, Navneet received reduced import duty liabilities and agreed to the export obligations prescribed under the program, as noted above. For certain licenses, Navneet reported that it had completed its export obligation under the EPCGS program, thereby eliminating the outstanding contingent liabilities on the corresponding duty exemptions. However, as explained above, in keeping with our practice, we have only accepted those claims that are accompanied by official letters from the GOI indicating that the companies have met their export obligations. Thus, for purposes of calculating the benefit, we treated licenses without accompanying letters from the GOI as contingent liabilities.

For those licenses for which Navneet demonstrated that it had completed its export obligations, we followed our methodology set forth in the *HRC First Review Final* and treated the import duty savings as grants received in the year in which the GOI waived the contingent liability on the import duty exemptions. In accordance with 19 CFR 351.524(b)(2), for each of the grant amounts, we performed the 0.5 percent test to determine whether the benefit should be fully expensed in the year of receipt or allocated over the AUL used in this proceeding pursuant to the grant allocation methodology set forth in 19 CFR 351.524(d)(1).

Aero, Navneet and Kejriwal reported that they paid application fees in order to obtain their EPCGS licenses. We preliminarily determine that the application fees paid qualify as an ''application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy.'' *See* Section 771(6)(A) of the Act. As a result, we have offset the benefit in an amount equal to the fees paid.

To calculate the subsidy rate, we summed the benefits from the waived licenses, which we determined conferred a benefit in the form of a grant and those licenses that have yet to be waived, which we determine conferred a benefit in the form of contingent liability loans. With respect to licenses related to imports of capital goods during the POI, we prorated the contingent liability by the actual number of days the contingent liability was in effect during the POI. *See HRC First Review Decision Memo*, at II.A.2, ''Export Promotion of Capital Goods Scheme (EPCGS),'' and cmt. 4. We divided the total benefits to Aero, Navneet, and Kejriwal under the program by the companies' respective total export sales during the POI. On this basis, we preliminarily determine the net countervailable subsidy from this program to be 0.05 percent *ad valorem* for Aero, 1.00 percent *ad valorem* for Navneet, and 0.05 percent *ad valorem* for Kejriwal.

3. Duty Entitlement Passbook Scheme (DEPS)

India's DEPS was enacted on April 1, 1997, as a successor to the Passbook Scheme (PBS). As with PBS, the DEPS enables exporting companies to earn import duty exemptions in the form of passbook credits rather than cash. All exporters are eligible to earn DEPS credits on a post-export basis, provided that the GOI has established a standard input/output norm (SION) for the exported product. DEPS credits can be used for any subsequent imports, regardless of whether they are consumed in the production of an export product. DEPS credits are valid for twelve months and are transferable after the foreign exchange is realized from the export sales on which the DEPS credits are earned. With respect to subject merchandise, the GOI has established a SION for the paper industry.

Companies reported earning credits up to 9 percent of the free on board (FOB) value of their export shipments during the POI. The Department has previously determined that the DEPS is countervailable. For example in *PET Film*, the Department determined that under the DEPS, a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided because (1) the GOI provides credits for the future payment of import duties; and, (2) the GOI does not have in place and does not apply a system that is reasonable and effective for the purposes intended to confirm which inputs, and in what amounts, are consumed in the production of the exported products. *PET Film Decision Memo*, at II.A.2 ''DEPS.'' Therefore, under 19 CFR 351.519(a)(4) and section 771(5)(E) of the Act, the entire amount of import duty exemption earned during the POI constitutes a benefit. Finally, this program can only be used by exporters and, therefore, is specific under section 771(5A)(B) of the Act. *Id.* No new information or evidence of changed circumstances has been presented in this investigation to warrant reconsideration of this finding. Therefore, we continue to find that the DEPS is countervailable.

Aero and Navneet reported earning DEPS credits on shipments of paper made during the POI. Aero also reported that it sold a DEPS credit during the POI that it earned prior to the period and that subsequent to the POI it sold a DEPS credit earned during the period. Navneet indicated that during the POI it sold all of the DEPS credits it earned during the period. Kejriwal indicated that it did not earn or sell any DEPS credits during the POI.

We have previously determined that this program provides a recurring benefit under 19 CFR 351.519(c). *See HRC Investigation.* In accordance with past practice and pursuant to 351.519(b)(2), we find that benefits from the DEPS program are conferred as of the date of exportation of the shipment for which the pertinent DEPS credits are earned. *See, e.g., Final Affirmative Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from India*, 64 FR 73131 (Dec. 29, 1999) (*CTL Plate from India*), and accompanying Issues and Decision Memorandum, at cmt. 4 (*CTL Decision Memo*) (explaining that for programs such as the DEPS, ''we calculate the benefit on an ''earned'' basis (that is upon export) where it is provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis and the exact amount of the exemption is known.'').

For those DEPS credits that Aero and Navneet earned during the POI, we followed our past practice and calculated the benefit under the DEPS program by multiplying the FOB value of each export shipment to the United States during the POI by the relevant percentage of DEPS credit allowed under the program. We then subtracted as an allowable offset the actual amount of application fees paid for each license in accordance with section 771(6) of the Act. See *CTL Plate from India*, 64 FR at 73134.

As indicated above, both Aero and Navneet sold DEPS credits during the POI. It is the Department's practice to treat DEPS credits as financial contributions that, for purposes of measuring the benefit, are received on the date on which they are earned because it is at this point that recipients of value-based DEPS credits know the amount of the duty exemption or benefit they have received. *See CTL Decision Memorandum*, at cmt. 4. Furthermore, 19 CFR 351.503(c) states that in determining whether a benefit is conferred, the Department ''* * * is not required to consider the effect of the government action on the firm's performance, including its prices or output, *or how the firm's behavior otherwise is altered*'' (emphasis added). The Preamble to the Department's regulations explains that:

> In analyzing whether a benefit exists, we are concerned with what goes into a company, such as enhanced revenues and reduced-cost inputs in the broad sense that we have used the term, not with what the company does with the subsidy. *Countervailing Duties; Final Rule*, 63 FR 65348, 65361 (Nov. 25, 2998) (providing the rationale for 19 CFR 351.503(c)).

Given that the Department treats benefits under the DEPS program as recurring subsidies that are received on the date of export (*e.g.*, when they are earned) and that 19 CFR 351.503(c) directs the Department not to track what companies do with their subsidies after they have received them, we preliminary determine that the benefit under the DEPS program is equal to the amount of DEPS credit at the time of receipt, regardless of whether the license is subsequently sold after the date of receipt.[5] Thus, for DEPS credits that were earned and subsequently sold during or after the POI, we calculated the benefit based on the amount of credits earned, as described above, and not the amount for which the credits were sold. In keeping with this approach, we did not countervail sales of DEPS credits that were earned prior to the POI and sold during the POI. Accordingly, we calculated Aero and Navneet's benefit under the DEPS program based on the amount of DEPS credit earned during the POI, and not on the amount sold.

Because DEPS credits are earned on a shipment-by-shipment basis, in calculating the benefit from the DEPS program, we normally calculate the net subsidy rate by dividing the benefit earned on subject merchandise export shipments to the United States by total sales of subject merchandise to the United States during the POI. *See CTL Plate from India*, 64 FR at 73134. In the case of Aero, we have followed this calculation methodology. However, Navneet has claimed that it is unable to separately report its subject and non-subject sales of paper to the United States and, thus, has reported the DEPS credits it earned on sales of all paper made to the United States during the POI. As a result, we have divided the benefit Navneet earned during the POI on subject and non-subject paper shipments to the United States by Navneet's total export sales to the United States during the POI. For the final determination we will further examine this calculation and the appropriateness of dividing by total export sales to the United States.

On this basis, we preliminarily determine the net countervailable subsidy from the DEPS program to be 0.34 percent *ad valorem* for Aero and 5.39 percent *ad valorem* for Navneet.

4. Duty Free Replenishment Certificate (DFRC)

The DFRC scheme was introduced by the GOI in 2001 and is administered by the Director-General for Foreign Trade (DGFT). The DFRC is a duty replenishment scheme that is available to exporters for the subsequent import of inputs used in the manufacture of goods without payment of basic customs duty. In order to receive a license, which entitles the recipient subsequently to import duty free certain inputs used in the production of the exported product, as identified in a SION, within the following 24 months, a company must: (1) Export manufactured products listed in the GOI's export policy book and against which there is a SION for inputs required in the manufacture of the export product based on quantity; and (2) have realized the payment of export proceeds in the form of convertible foreign currency. *See* The Ministry of Commerce and Industry Directorate General of Foreign Trade Policy 2004–2009, sect. 4.2. The application must be filed within six months of the realization of the profits. DFRC licenses are transferrable, yet the transferee is limited to importing only those products and in the quantities specified on the license. *Id.*

Although 19 CFR 351.519(b)(2) provides that the Secretary will normally consider any benefit from a duty drawback or exemption program as having been received as of the date of exportation, we preliminary find that an exception to this normal practice is warranted here in view of the unique manner in which this program operates. Specifically, a company may not submit an application for a DFRC license until the proceeds of the sale are realized. The license, once granted, specifies the quantity of the particular inputs that the bearer may subsequently import duty free. In *HRC First Review Final*, we noted that the benefits from another duty exemption program, the DEPS, were conferred as of the date of exportation of the shipment because it is at that point that ''the amount of the benefit is known by the exporter.'' *See HRC First Review Decision Memo*, at II.A.4 ''Duty Entitlement Passbook Scheme.'' However, in the case of the DFRC, the company does not know at the time of export the value of the duty exemption that it will ultimately receive. It only knows the quantity of the inputs it will likely be able to import duty free if its application for a DFRC license is granted. Unlike the DEPS, under the DFRC, the respondent will only know the total value of the duty exemption when it subsequently uses that license to import the specified products duty free or sells it. Therefore, we preliminarily determine that the date of receipt is linked to when the company uses the certificate to import an input duty free or, in the case in which the company sells the certificate, the date of sale.

During the POI, no companies reported importing using a DFRC license or exporting against a DFRC license. However, Aero, Navneet, and Kejriwal reported selling DFRC licenses. The Department has previously determined that the sale of quantity-based import licenses confers a countervailable export subsidy. *See, e.g., CTL Plate from India,* 64 FR 73131, 73134; *Certain Iron-Metal Castings from India: Final Results of Countervailing Duty Administrative Review,* 63 FR 64050 (Nov. 18, 1998); and *Certain Iron-Metal Castings from India: Final Results of Countervailing Duty Administrative Review,* 62 FR 32297, 32298 (June 13, 1997). Therefore, in accordance with

[5] We note that this approach differs from how we treat sales of quantity-based licenses, such as those that exist udner the advance license program. *See, e.g., CTL Plate from India*, 64 FR at 73135.

section 771(5A)(B) of the Act, we determine that the sale of DFRC licenses is an export subsidy and that a financial contribution is provided, under section 771 5(D)(ii) of the Act, in the form of the revenue foregone. We further find that the sales of the licenses conferred a benefit under section 771 (5)(E) of the Act.

To calculate the countervailable benefits conferred to Aero, Navneet and Kejriwal, respectively on their sales of DFRC licenses, we identified the proceeds Aero, Navneet and Kejriwal each realized from sales of DFRC licenses during the POI (net of application fees). We then calculated the net subsidy rate by dividing the total benefit by each company's total value of exports to the United States during the POI. On this basis, we determine the net countervailable subsidy rate for this program to be 3.09 percent for Aero, 0.12 percent *ad valorem* for Navneet, and 1.35 percent *ad valorem* for Kejriwal. For the Final Determination, we will continue to examine whether calculating the net subsidy rate by dividing the total benefit using the companies' total exports to the U.S. as the denominator is appropriate. Further, given the way this program operates, we also invite parties to comment on whether application of 19 CFR 351.519 or 19 CFR 351.514 is most appropriate.

5. Advance License Program (ALP)

Under the ALP, exporters may import, duty free, specified quantities of materials required to produce products that are subsequently exported. Companies, however, remain contingently liable for the unpaid duties until they have exported the finished products. The quantities of imported materials and exported finished products are linked through SIONs established by the GOI. *See* Ministry of Commerce and Industry Directorate General of Foreign Trade Policy 2004–2009, at sect. 4.1.

The Department previously found the 1997–2002 Export/Import Guidelines underlying the ALP not to be countervailable. *See PET Film Decision Memo,* at II.B.1 ''Advance Licenses;'' *see also HRC Investigation,* 66 FR 49635 (Sept. 28, 2001) and *HRC Investigation Decision Memo* at ''Advance Licenses.'' However, in the recent *PET Film Prelim,* the Department examined the 2002–2007 Export/Import Policy Guidelines underlying the ALP and found the program to be countervailable because the GOI does not have in place and does not apply a system that is reasonable and effective for the purposes intended, in accordance with 19 CFR 351.519(a)(4). *See Preliminary Results and Rescission in Part of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet and Strip from India,* 70 FR 46483, 46486–87 (Aug. 10, 2005) (*PET Film Prelim*). In the *PET Film Prelim,* the Department found that the GOI could not demonstrate that the ALP was implemented and monitored effectively. The Department also determined that the ALP was countervailable because the program permits companies to meet their export requirements through ''deemed exports'' (*i.e.*, sales within India that are categorized as exports even though there appears to be no tangential link to exports). *See PET Film Prelim,* 70 FR at 46487. The Department also found that the ALP was countervailable because the GOI could not demonstrate how the PET Film SIONs used to determine the duty exemptions were calculated or that there was a requirement that the SIONs be updated.

Only Aero reported using the ALP during the POI. Upon examination of the ALP in this investigation, we find that the systemic deficiencies found in *PET Film Prelim* remain in place. While the GOI reported that the SIONs for the lined paper industry have been updated, we note that the changes occurred after the POI. Further, Chapter 4 of the Ex-Im Handbook permits deemed exports to be used to meet a manufacturer's export commitment under the DFRC. The GOI also reported that it has not verified the export fulfillment of any of the respondents in this case.

Therefore, we preliminarily determine that the ALP confers countervailable subsidies because: (1) A financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided under the program, as the GOI provides the respondents with an exemption of import duties; (2) the GOI does not have in place and does not apply a system that is reasonable and effective for the purposes intended under 19 CFR 351.519(a)(4), to confirm which inputs, and in what amounts, are consumed in the production of the exported products, and thus the entire amount of import duty exemption earned by the respondent constitutes a benefit under section 771(5)(E) of the Act; and (3) this program is contingent upon export and, therefore, is specific under section 771(5A)(B) of the Act. However, as the Department stated in *PET Film Prelim,* we will continue to examine this program and if a party in this proceeding is able to provide information with respect to the systemic deficiencies identified above, the Department will reconsider our determination that the ALP is countervailable. *See PET Film Prelim,* 70 FR at 46487. Pursuant to 19 CFR 351.519(c), exemptions of import duties on imports consumed in production provide a recurring benefit. Thus, we treated the benefit provided under the ALP as a recurring benefit. To calculate the subsidy rate, we subtracted from the total amount of exempted duties under the ALP during the POI the actual amount of application fees paid for each license in accordance with section 771(6) of the Act (in order to receive the benefits of the ALP, companies must pay application fees). We then divided the resulting net benefit by Aero's total value of exports of lined paper products. We preliminarily determine the net countervailable subsidy provided to Aero under the ALP to be 2.55 percent *ad valorem.*

II. Programs Preliminarily Determined To Be Not Used

We preliminarily determine that the producers/exporters of certain lined paper products did not apply for or receive benefits during the POI under the programs listed below.

GOI Programs

A. Export Processing Zones (EPZ) and Export Oriented Units (EOU)
B. Income Tax Exemption Scheme (Sections 10A, 10B, and 80HHC)
C. Market Development Assistance (MDA)
D. Status Certificate Program
E. Market Access Initiative

State Government Programs

A. State of Gujarat Sales Tax Incentives
B. State of Maharashtra Sales Tax Incentives

For purposes of this preliminary determination, we have relied on the GOI and respondent companies' responses to preliminarily determine non-use of the programs listed above. During the course of verification, the Department will examine whether these programs were used by respondent companies during the POI.

Verification

In accordance with section 782(i) of the Act, we will verify the information submitted prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have determined individual rates for Aero, Kejriwal, and Navneet. To calculate the ''all others'' rate, we weight-averaged the individual rates of Aero, Kejriwal, and Navneet by each company's respective exports of subject

merchandise to the United States during the POI. *See e.g., PET Film,* 67 FR 34905 and *HRC Investigation,* 66 FR at 49636. These rates are summarized in the table below:

Producer/exporter	Subsidy rate *ad valorem*
Aero Exports	6.92
Kejriwal Paper Limited	2.20
Navneet Publications	7.17
All Others	5.99

In accordance with section 703(d)(1)(B) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of the subject merchandise from India, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or the posting of a bond for such entries of the merchandise in the amounts indicated above. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Notification of Parties

In accordance with 19 CFR 351.224(b), the Department will disclose to the parties the calculations for this preliminary determination within five days of its announcement. Unless otherwise notified by the Department, interested parties may submit case briefs within 50 days of the date of publication of the preliminary determination in accordance with 19 CFR 351.309(c)(i). As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. *See* 19 CFR 351.309(d).

In accordance with 19 CFR 351.310(c), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties will be notified of the schedule for the hearing and parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Requests for a public hearing should contain: (1) Party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act.

Dated: February 6, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix I

Scope of the Investigation

The scope of this investigation includes certain lined paper products, typically school supplies,[6] composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets,[7] including but not limited to such products as single- and multi-subject notebooks, composition books, wireless notebooks, looseleaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8¾ inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or ''tear-out'' size), and are measured as they appear in the product (*i.e.*, stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of this investigation whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated, included with, or attached to the product, cover and/or backing thereto. Specifically excluded from the scope of this investigation are:

- Unlined copy machine paper;
- Writing pads with a backing (including but not limited to products commonly known as ''tablets,'' ''note pads,'' ''legal pads,'' and ''quadrille pads''), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole-punched or drilled filler paper;
- Three-ring or multiple-ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;
- Index cards;
- Printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap;
- Newspapers;
- Pictures and photographs;
- Desk and wall calendars and organizers (including but not limited to such products generally known as ''office planners,'' ''time books,'' and ''appointment books'');
- Telephone logs;
- Address books;
- Columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data;
- Lined business or office forms, including but not limited to: preprinted business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;
- Lined continuous computer paper;
- Boxed or packaged writing stationary (including but not limited to products commonly known as ''fine business paper,'' ''parchment paper, '' and ''letterhead''), whether or not containing a lined header or decorative lines;
- Stenographic pads (''steno pads''), Gregg ruled,[8] measuring 6 inches by 9 inches;

Also excluded from the scope of this investigation are the following trademarked products:

- Fly™ lined paper products: A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly™

[6] For purposes of this scope definition, the actual use or labeling of these products as school supplies or non-school supplies is not a defining characteristic.

[7] There shall be no minimum page requirement for looseleaf filler paper.

[8] ''Gregg ruling'' consists of a single- or double-margin vertical ruling line down the center of the page. For a six-inch by nine-inch stenographic pad, the ruling would be located approximately three inches from the left of the book.

• Pen-top computer. The product must bear the valid trademark Fly™ [9]

• Zwipes™: A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially-developed permanent marker and erase system (known as a Zwipes™ pen). This system allows the marker portion to mark the writing surface with permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes™.[10]

• FiveStar®Advance™: A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is .019 inches (within normal manufacturing tolerances) and rear cover is .028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured at both ends of a 1″ wide elastic fabric band. This band is located 2⅜″ from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar®Advance™.[11]

• FiveStar Flex™: A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by a 300 denier polyester spine cover extending the entire length of the spine and bound by a 3-ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is .019 inches (within normal manufacturing tolerances) and rear cover is .028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover. The product must bear the valid trademark FiveStar Flex™.[12]

Merchandise subject to this investigation is typically imported under headings 4820.10.2050, 4810.22.5044, and 4811.90.9090 of the Harmonized Tariff Schedule of the United States (HTSUS).[13] The tariff classifications are provided for convenience and U.S. Customs purposes; however, the written description of the scope of the investigation is dispositive.

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[9] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[10] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[11] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[12] Products found to be bearing an invalidly licensed or used trademark are not exclused from the scope.

[13] During the investigation additional HTSUS subheadings may be identified.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–819]

Notice of Preliminary Results of Countervailing Duty Administrative Review: Low Enriched Uranium From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on low enriched uranium (LEU) from France for the period January 1, 2004, through December 31, 2004. For information on the net subsidy for the reviewed company, please see the ''Preliminary Results of Review'' section, *infra*. If the final results remain the same as the preliminary results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties as detailed in the ''Preliminary Results of Administrative Review'' section, *infra*. Interested parties are invited to comment on these preliminary results. (*See* the ''Public Comment'' section, *infra*).

DATES: Effective February 15, 2006.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4793.

SUPPLEMENTARY INFORMATION:

Background

On February 13, 2002, the Department published in the **Federal Register** the CVD order on LEU from France. *See Amended Final Determination and Notice of Countervailing Duty Order: Low Enriched Uranium From France*, 67 FR 6689 (February 13, 2002) (*Amended LEU Final Determination*). On February 1, 2005, the Department published an opportunity to request an administrative review of this CVD order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 5136 (February 1, 2005). On February 1, 2005, we received a timely request for review from Eurodif S.A. (Eurodif)/Compagnie Generale Des Matieres Nucleaires (COGEMA), the French producer/exporter of subject merchandise covered under this review, and on February 25, 2005, we received a timely request for review from petitioners.[1] On March 23, 2005, the Department published the initiation of the administrative review of the CVD order on LEU from France, covering the January 1, 2004, through December 31, 2004, period of review (POR). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 70 FR 14643 (March 23, 2005).

On April 5, 2005, the Department issued a questionnaire to Eurodif/COGEMA and the Government of France (GOF), collectively ''the respondents.'' On May 31, 2005, the Department received questionnaire responses from Eurodif/COGEMA and the GOF. On August 3, 2005, the Department issued a supplemental questionnaire to respondents and received their questionnaire responses on August 19, 2005. A second supplemental questionnaire was issued to respondents on September 14, 2005. On October 17, 2005, the Department published in the **Federal Register** a notice of extension of the deadline for the preliminary results of this administrative review. *See Notice of Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Reviews: Low Enriched Uranium from France, Germany, the Netherlands, and the United Kingdom,* 70 FR 60284 (October 17, 2005). The Department received a response to the September 14, 2005, supplemental questionnaire from Eurodif/COGEMA on December 20, 2005, and from the GOF on December 21, 2005.

[1] Petitioners are USEC Inc. and its wholly owned subsidiary, United States Enrichment Corporation.

In accordance with 19 CFR 351.213(b), this review covers only those producers or exporters for which a review was specifically requested. The only company subject to this review is Eurodif/COGEMA. This review covers two programs.

Scope of the Order

The product covered by this order is all LEU. LEU is enriched uranium hexafluoride (UF_6) with a U^{235} product assay of less than 20 percent that has not been converted into another chemical form, such as UO_2, or fabricated into nuclear fuel assemblies, regardless of the means by which the LEU is produced (including LEU produced through the down-blending of highly enriched uranium).

Certain merchandise is outside the scope of this order. Specifically, this order does not cover enriched uranium hexafluoride with a U^{235} assay of 20 percent or greater, also known as highly enriched uranium. In addition, fabricated LEU is not covered by the scope of this order. For purposes of this order, fabricated uranium is defined as enriched uranium dioxide (UO_2), whether or not contained in nuclear fuel rods or assemblies. Natural uranium concentrates (U_3O_8) with a U^{235} concentration of no greater than 0.711 percent and natural uranium concentrates converted into uranium hexafluoride with a U235 concentration of no greater than 0.711 percent are not covered by the scope of this order.

Also excluded from this order is LEU owned by a foreign utility end-user and imported into the United States by or for such end-user solely for purposes of conversion by a U.S. fabricator into uranium dioxide (UO_2) and/or fabrication into fuel assemblies so long as the uranium dioxide and/or fuel assemblies deemed to incorporate such imported LEU (i) remain in the possession and control of the U.S. fabricator, the foreign end-user, or their designated transporter(s) while in U.S. customs territory, and (ii) are re-exported within eighteen (18) months of entry of the LEU for consumption by the end-user in a nuclear reactor outside the United States. Such entries must be accompanied by the certifications of the importer and end user.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2844.20.0020. Subject merchandise may also enter under 2844.20.0030, 2844.20.0050, and 2844.40.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Period of Review

The POR for which we are measuring subsidies is January 1, 2004, through December 31, 2004.

Company History

Eurodif was formed in 1973, by French and foreign government agencies to provide a secure source of LEU in order to facilitate the development of nuclear energy programs in participating countries. During the POR, Eurodif was 44.65 percent-owned by COGEMA, which is wholly owned by AREVA, a corporation principally owned by Commissariat d'Energie Atomique, an agency of the GOF. Further, Eurodif was 25 percent-owned by SOFIDIF, a French company that is 60 percent-owned by COGEMA, thereby effectively placing COGEMA's ownership of Eurodif at approximately 60 percent during the POR. The remaining major shareholders of Eurodif during the POR were ENUSA, an entity of the Spanish government, SYNATOM, an entity of the Belgian government, and ENEA, an entity of the Italian government.

Programs Preliminarily Determined To Be Countervailable

1. Purchases at Prices That Constitute ''More Than Adequate Remuneration''

Eurodif provides LEU to Electricite de France (EdF), a wholly owned French government agency that supplies, imports, and exports electricity. EdF is the major supplier of electricity in France, and is regulated by the Gas, Electricity, and Coal Department of the Ministry of Industry and the Budget and Treasury Departments of the Ministry of Finance. Since 1979, when Eurodif began enrichment at its Georges-Besse gaseous diffusion facility, Eurodif and EdF have entered into long-term supply contracts. All deliveries of the subject merchandise to EdF during the POR were made pursuant to the 1995 contract.

In the *Final Affirmative Countervailing Duty Determination: Low Enriched Uranium From France*, 66 FR 65901 (December 21, 2001) (*LEU Final Determination*), and the *Final Results of Countervailing Duty Administrative Review: Low Enriched Uranium From France,* 70 FR 39998 (July 12, 2005) (*LEU 2003 Final Results*), we found this program to be countervailable. The facts on which this determination was made have not changed. EdF is still owned by the GOF, and because EdF is purchasing a good from Eurodif, a financial contribution is being provided under section 771(5)(D)(iv) of the Tariff Act of 1930, as amended (the Act). The program is specific under section 771(5A)(D)(i) of the Act because it is available only to Eurodif.

Under section 771(5)(E)(iv) of the Act, a countervailable benefit may be provided by a government's purchase of a good for ''more than adequate remuneration.'' Pursuant to section 771(5)(E)(iv) of the Act, the adequacy of remuneration will be determined in relation to the prevailing market conditions for the good being purchased in the country which is subject to the review. Therefore, in order to determine whether the prices paid by EdF constitute ''more than adequate remuneration,'' we compared the prices paid by EdF to Eurodif with the prices paid by EdF to its other suppliers.

Due to the difference in the pricing structure between EdF and Eurodif, as compared with the pricing structure between EdF and its other suppliers, it is necessary to make certain adjustments for the comparison. Unlike most of Eurodif's other customers, EdF provides its own energy for Eurodif to use when producing LEU. Beginning in 2002, EdF started to pay Eurodif in energy for the energy that Eurodif uses to produce LEU for EdF. Operational costs associated with the production of the LEU, however, are charged to EdF by Eurodif.

Conversely, EdF does not supply electricity to its other LEU suppliers. As such, these other suppliers charge EdF a single price per separative work unit (SWU).[2] Therefore, in order to make a proper comparison between the benchmark price (*i.e.*, the single price per-SWU) and the actual price (*i.e.*, the price paid by EdF to Eurodif), we have included both an operational and energy price paid by EdF to Eurodif.

As part of the arrangement for obtaining LEU, customers often provide an amount of natural uranium equal to that which theoretically goes into the LEU they are purchasing. The record, however, does not contain information on the value of the natural uranium provided by EdF or other customers to Eurodif. In the ''Issues and Decision Memorandum from Bernard T. Carreau, Deputy Assistant Secretary for AD/CVD Enforcement II to Faryar Shirzad, Assistant Secretary for Import Administration concerning the Final Affirmative Countervailing Duty Determination: Low Enriched Uranium from France—Calendar Year 1999,''

[2] The ''separative work unit'' or (SWU) is the unit of measure of effort required to carry out isotopic separation of the uranium from its natural state of the concentration of ''assay'' required for power plant use.

dated December 13, 2001, we assumed that the value of all natural uranium is the same (*see* discussion at page 5). Therefore, in making purchase comparisons in this review, we continue to assume that the value of all natural uranium is the same in instances where EdF supplied its own feed material for enrichment. Thus, we have not included a value for the natural uranium component of the LEU delivered to EdF by Eurodif.

In order to determine whether a benefit was provided to Eurodif/COGEMA during the POR, we calculated a per-SWU price for both the energy and operational components of the LEU purchased by EdF from Eurodif. *See* the February 8, 2006, Memorandum concerning the Calculations for the Notice of Preliminary Countervailing Duty Results: Low Enriched Uranium from France.[3] After adding these two components together, we compared the per-SWU price paid to Eurodif by EdF in 2004 with the per-SWU price paid by EdF to its other LEU suppliers in 2004. Based on our analysis, we preliminarily determine that prices paid by EdF to Eurodif were higher than prices EdF paid to its other suppliers. Therefore, in accordance with section 771(5)(E)(iv) of the Act, we preliminarily determine that this program conferred countervailable benefits to Eurodif in 2004. Because EdF's purchases from Eurodif are not exceptional but, rather, are made on an ongoing basis from year to year, we determine that the benefit conferred under this program is recurring under 19 CFR 351.524(c). Therefore, we have expensed the benefit in the year of receipt, *i.e.*, calendar year 2004.

To determine the program rate for the POR, we first multiplied the benefit amount by the sales of subject merchandise to the United States divided by total sales, and then divided the result by the sales that entered U.S. customs territory during calendar year 2004. Specifically, we calculated the *ad valorem* rate for this program using the following formula:

$$A = \frac{B * (C / D)}{E}$$

Where:

A = *Ad Valorem* Rate
B = Subsidy Benefit
C = Sales of Subject Merchandise to the United States during Calendar Year 2004
D = Total Sales during Calendar Year 2004 (including COGEMA sales on behalf of Eurodif)
E = Sales that Entered U.S. customs territory during Calendar Year 2004

On this basis, we preliminarily determine the net countervailable subsidy from this program to be 1.53 percent *ad valorem*.

2. Exoneration/Reimbursement of Corporate Income Taxes

Under a specific governmental agreement entered into upon Eurodif's creation, Eurodif is only liable for income taxes on the portion of its income relating to the percentage of its private ownership. Eurodif is fully exonerated from payment of corporate income taxes corresponding to the percentage of its foreign government ownership and is eligible for a reimbursement of the amount of corporate income taxes corresponding to the percentage of its French government ownership. In the *LEU Final Determination* and *LEU 2003 Final Results*, we found this program to be countervailable. No new information has been provided in this review to warrant reconsideration of our determination.

During the POR, (*i.e.*, calendar year 2004), Eurodif filed its 2003 corporate income tax return. Based on the governmental tax agreement, Eurodif was exonerated from a portion of its 2003 income taxes filed during the POR. Eurodif was also reimbursed that portion of its 2003 income taxes attributable to the percentage of French government ownership during the POR. This tax exemption and reimbursement constitute a financial contribution within the meaning of section 771(5)(D)(ii) of the Act. Further, because the tax exemption and reimbursement are limited to Eurodif, the benefit is specific in accordance with section 771(5A)(D)(i) of the Act.

In accordance with 19 CFR 351.509(b), we calculated the benefit under this program by determining the amount of corporate income taxes that Eurodif would have otherwise paid, absent the program, on the tax return it filed during the POR. Specifically, we added the amount of exonerated taxes and the amount of reimbursable taxes during the POR. Consistent with the methodology that we employed in the ''Purchase at Prices that Constitute 'More Than Adequate Remuneration' '' section above, we multiplied the total benefit amount by the sales of subject merchandise to the United States divided by total sales, and then divided that result by sales that entered U.S. customs territory during 2004. On this basis, we preliminarily determine a net countervailable subsidy of 3.53 percent *ad valorem* for this tax program.

Preliminary Results of Review

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated a subsidy rate for Eurodif/COGEMA for calendar year 2004. We preliminarily determine that the total estimated net countervailable subsidy rate is 5.06 percent *ad valorem*.

While the countervailing duty deposit rate for Eurodif/COGEMA may change as a result of this administrative review, we have been enjoined from liquidating any entries of the subject merchandise. Consequently, we do not intend to issue liquidation instructions for these entries until such time as the injunctions, issued on June 24, 2002, and November 1, 2004, are lifted.

If the final results of this review remain the same as these preliminary results, the Department, however, intends to instruct CBP to collect cash deposits of estimated countervailing duties at 5.06 percent *ad valorem* of the f.o.b. invoice price on all shipments of the subject merchandise from Eurodif/COGEMA entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. We will also instruct CBP to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the most recently completed administrative proceeding conducted under the URAA. *See Amended LEU Final Determination*. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of the public announcement of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless otherwise indicated by the Department, case briefs must be submitted within 30 days after the date of publication of this notice. Rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs, unless otherwise

[3] A public version of the document is available on the public record in the Central Records Unit (CRU) located in the main Commerce Building in room B–099.

specified by the Department. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument. Parties submitting case and/or rebuttal briefs are requested to provide the Department copies of the public version on disk. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, that is, 37 days after the date of publication of these preliminary results.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due. The Department will publish the final results of this administrative review, including the results of its analysis of arguments made in any case or rebuttal briefs.

This administrative review is issued and published in accordance with section 751(a)(1) and 777(i)(1) of the Act.

Dated: February 8, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–2166 Filed 2–14–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122005C]

Notice of Intent to Prepare an Environmental Impact Statement on Impacts of Research on Steller Sea Lions and Northern Fur Seals Throughout Their Range in the United States

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare environmental impact statement; extension of comment period.

SUMMARY: On December 28, 2005, the NMFS announced its intent to prepare an Environmental Impact Statement (EIS) to analyze the environmental impacts of administering grants and issuing permits to facilitate research on endangered and threatened Steller sea lions (*Eumetopias jubatus*) and depleted northern fur seals (*Callorhinus ursinus*). Written comments were due by February 13, 2006. NMFS has decided to allow additional time for submission of public comments on this action.

DATES: The public comment period for this action has been extended from February 13 to February 25, 2006. Written comments must be postmarked by February 25, 2006.

ADDRESSES: Written comments should be mailed to: Steve Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910–3226. Written comments may also be submitted by facsimile to 301–427–2583, or by e-mail at *ssleis.comments@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Andrew Wright at 301–713–2289.

SUPPLEMENTARY INFORMATION: On December 28, 2005 (70 FR 76780) NMFS announced its intent to prepare an EIS regarding Steller sea lion and northern fur seal research. Background information concerning the EIS can be found in the December 28, 2005, **Federal Register** notice and is not repeated here. For additional information about Steller sea lions, northern fur seals, the permit process, and this EIS, please visit the project website at: *http://www.nmfs.noaa.gov/pr/permits/eis/steller.htm*.

Dated: February 9, 2006.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 06–1432 Filed 2–10–06; 3:29 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020806E]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene its Socioeconomic Panel (SEP).

DATES: The meeting will convene at 9 a.m. on Thursday, March 2, 2006, and conclude no later than 12 noon on Friday, March 3, 2006.

ADDRESSES: The meeting will be held at the Quorum Hotel Tampa, 700 North Westshore Boulevard, Tampa, FL 33609.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Assane Diagne, Economist, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) will convene its Socioeconomic Panel (SEP) to discuss total allowable catch (TAC) allocation issues. The SEP will prepare a report containing their conclusions and recommendations. This report will be presented to the Council at its meeting March 20–23, 2006 at the Radisson Admiral Semmes Hotel in Mobile, AL.

A copy of the agenda and related materials can be obtained by calling the Council office at (813) 348–1630.

Although other non-emergency issues not on the agendas may come before the SEP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions of the SEP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: February 10, 2006.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries Service, National Marine Fisheries Service.

[FR Doc. E6–2159 Filed 2–14–06; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Requirements for Baby-Bouncers, Walker-Jumpers, and Baby-Walkers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the **Federal Register** of December 5, 2005 (70 FR 72429), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of the collection of information in the requirements for baby-bouncers, walker-jumpers, and baby-walkers in regulations codified at 16 CFR 1500.18(a)(6) and 1500.86(a)(4).

No comments were received in response to that notice. Therefore, by publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget (OMB) a request for extension of approval of that collection of information without change.

The regulation codified at 16 CFR 1500.18(a)(6) establishes safety requirements for baby-bouncers, walker-jumpers, and baby-walkers to reduce unreasonable risks of injury to children associated with those products. Those risks of injury include amputations, crushing, lacerations, fractures, hematomas, bruises and other injuries to children's fingers, toes, and other parts of their bodies. The regulation codified at 16 CFR 1500.86(a)(4) requires manufacturers and importers of baby-bouncers, walker-jumpers, and baby-walkers to maintain records for three years containing information about testing, inspections, sales and distribution of these products.

The records of testing and other information required by the regulations allow the Commission to determine if baby-bouncers, walker-jumpers, and baby-walkers comply with the requirements of the regulation codified at 16 CFR 1500.18(a)(6). If the Commission determines that products fail to comply with the regulations, the records required by 16 CFR 1500.86(a)(4) enable the firm and the Commission to: (i) Identify specific models of products which fail to comply with applicable requirements; and (ii) notify distributors and retailers in the event those products are subject to recall.

Additional Information About the Request for Extension of Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

Title of information collection: Requirements for Baby-Bouncers, Walker-Jumpers, and Baby-Walkers, 16 CFR 1500.18(a)(6) and 1500.86(a)(4).

Type of request: Extension of approval without change.

General description of respondents: Manufacturers and importers of baby-bouncers, walker-jumpers, and baby-walkers.

Estimated number of respondents: 28.

Estimated average number of hours per respondent: 2 per year.

Estimated number of hours for all respondents: 56 per year.

Estimated cost of collection for all respondents: $1,600 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by March 17, 2006 to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington DC 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814. Written comments may also be submitted to the Office of the Secretary, ConsumerProduct Safety Commission, by e-mail at *cpsc-os@cpsc.gov* or facsimile at (301) 504–0127.

Copies of this request for extension of the information collection requirements and supporting documentation are available from Linda Glatz, Management and Program Analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7671.

Dated: February 9, 2006.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E6–2083 Filed 2–14–06; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Flammability Standards for Carpets and Rugs

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the **Federal Register** of December 5, 2005 (70 FR 72427), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), to announce the agency's intention to seek extension of approval of collections of information in regulations implementing two flammability standards for carpets and rugs. The regulations are codified at 16 CFR parts 1630 and 1631, and prescribe requirements for testing and recordkeeping by persons and firms issuing guaranties of products subject to the Standard for the Surface Flammability of Carpets and Rugs and the Standard for the Surface Flammability of Small Carpets and Rugs.

No comments were received in response to that notice. Therefore, by publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget a request for extension of approval of those collections of information without change.

Additional Information About the Request for Reinstatement of Approval of Collections of Information

Agency address: Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

Title of information collection: Standard for the Surface Flammability of Carpets and Rugs, 16 CFR part 1630; Standard for the Surface Flammability of Small Carpets and Rugs, 16 CFR part 1631.

Type of request: Extension of approval without change.

General description of respondents: Manufacturers and importers of products subject to the flammability standards for carpets and rugs.

Estimated number of respondents: 120.

Estimated average number of hours per respondent: 250 per year.

Estimated number of hours for all respondents: 30,000 per year.

Estimated cost of collection for all respondents: $862,500.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by March 17, 2006 to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington DC 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814. Written comments may also be

submitted to the Office of the Secretary, Consumer Product Safety Commission, by e-mail at *cpsc-os@cpsc.gov* or facsimile at (301) 504–0127.

Copies of this request for extension of the information collection requirements and supporting documentation are available from Linda Glatz, Management and Program Analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814 Washington, DC 20207; telephone: (301) 504–7671.

Dated: February 9, 2006.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E6–2085 Filed 2–14–06; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Procurement of Goods and Services

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the **Federal Register** of December 5, 2005 (70 FR 72429), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of a collection of information associated with the procurement of goods and services. No comments were received in response to that notice. The Commission now announces that it has submitted to the Office of Management and Budget a request for extension of approval of that collection of information.

The Commission's procurement activities are governed by the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253 *et seq.*). That law requires the Commission to procure goods and services under conditions most advantageous to the government, considering cost and other factors. Forms used by the Commission request persons who quote, propose, or bid on contracts with the agency to provide information about costs or prices of goods and services to be supplied; specifications of goods and descriptions of services to be supplied; specifications of goods and descriptions of services to be delivered; competence of the offeror to provide the goods or services; and other information about the offeror, such as the size of the firm and whether it is minority owned.

The Commission uses the information provided by bidders to determine the reasonableness of prices and costs and the responsiveness of potential contractors to undertake the work involved so that all bids may be awarded in accordance with Federal Procurement laws.

Additional Information About the Request for Extension of Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

Title of information collection: Information Collection Associated with Procurement of Goods and Services.

Type of request: Extension of approval without change.

General description of respondents: Persons and firms providing bids, proposals, and quotations to the Commission for goods and services.

Estimated number of respondents: 870.

Estimated average number of hours per respondent: 20.29 per year.

Estimated number of hours for all respondents: 17,658 per year.

Estimated cost of collection for all respondents: $926,282 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by March 17, 2006 to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814. Written comments may also be submitted to the Office of the Secretary, Consumer Product Safety Commission, by e-mail at *cpsc-os@cpsc.gov* or facsimile at (301) 504–0127.

Copies of this request for extension of the information collection requirements and supporting documentation are available from Linda Glatz, Management and Program Analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7671.

Dated: February 9, 2006.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E6–2086 Filed 2–14–06; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Active Duty Service Determinations for Civilian or Contractual Groups

AGENCY: Department of the Air Force.

ACTION: Notice.

SUMMARY: On February 3, 2006, the Secretary of the Air Force, acting as Executive Agent of the Secretary of Defense, determined that the service of the group known as ''North Korean Civilian Partisans Recruited, Trained, and Commanded for Military Operations by the U.S. Eighth Army, 8240th Army Unit Far East Liaison Detachment, on the Korean Peninsula and Accompanying Islands from January 15, 1951, Through July 27, 1953,'' shall not be considered ''active duty'' for purposes of all laws administered by the Department of Veterans Affairs (VA).

FOR FURTHER INFORMATION CONTACT: Mr. James D. Johnston at the Secretary of the Air Force Personnel Council (SAFPC); 1535 Command Drive, EE Wing, 3d Fl.; Andrews AFB, MD 20762–7002.

Bao-Ahn Trin,

Air Force Federal Register Liaison Officer.

[FR Doc. E6–2135 Filed 2–14–06; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the U.S. Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

U.S. Patent No. 6,883,453: UNMANNED WATERCRAFT RETRIEVAL SYSTEM.//U.S. Patent No. 6,889,624: GRAPPLE ANCHOR DEVICE FOR UNDERWATER TOWING OF WATERCRAFT.//U.S Patent No. 6,895,371: GEOMETRICAL MODELING OF STRUCTURAL PRODUCTS.//U.S. Patent No. 6,898,584: MONITORING OF AIRCRAFT USAGE.//U.S Patent No. 6,921,898: BI–DIRECTIONAL REFLECTANCE DISTRIBUTION FUNCTION DETERMINATION BY LARGE SCALE FIELD MEASUREMENT.//U.S Patent No. 6,926,567: DIRECTIONAL STEERING CONTROLLED JET PROPULSION.//U.S.

Patent No. 6,930,311: LIGHTWEIGHT NEUTRON REMMETER.//U.S. Patent No. 6,932,013: MANEUVERING OF SUBMERGED WATERJET PROPELLED SEA CRAFT.//U.S. Patent No. 6,932,661: STEERING AND DIRECTIONAL REVERSING CONTROL FOR WATERJET PROPULSION.//U.S. Patent No. 6,953,003: WATERCRAFT LANDING CRADLE.//U.S. Patent No. 6,960,865: POLYURETHANE ELECTROSTRICTION.//U.S. Patent No. 6,961,597: STRIPS FOR IMPARTING LOW NONLINEARITY TO HIGH TEMPERATURE SUPERCONDUCTOR MICROWAVE FILTERS.//U.S. Patent No. 6,964,738: BIOREACTOR PROCESSING OF WASTEWATER.//U.S Patent No. 6,965,505: SHIP DEGAUSSING SYSTEM AND ALGORITHM.//U.S Patent No. 6,968,802: BUOYANT RETRIEVAL OF UNMANNED SEAWATER VEHICLES.// U.S. Patent No. 6,976,599: MULTI-RAIL DUAL HOISTING CRANE.//U.S. Patent No. 6,981,400: SLIP METER FOR DETERMINATION OF SURFACE SLIP RESISTANCE.//U.S. Patent No. 6,981,673: WEAR RESISTING SLEEVE SYSTEM FOR AIRCRAFT LANDING ARRESTING CABLES.//U.S. Patent No. 6,981,598: TURN-TABLE DUAL HOISTING CRANE.//U.S. Patent No. 6,982,502: HYBRID ELECTRIC LINEAR ACTUATOR.//U.S Patent No. 6,983,710: HIGH SPEED BRAKING OF SUBMERGED PROPELLED SEA CRAFT.//U.S. Patent No. 6,991,468: FOLDED FOIL AND METAL FIBER BRAID ELECTRICAL CURRENT COLLECTOR BRUSH.

ADDRESSES: Requests for copies of the patents cited should be directed to: Naval Surface Warfare Center Carderock Division, Code 0117, 9500 MacArthur Blvd, West Bethesda, MD 20817–5700, and must include the patent number.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Teter Ph.D., Director, Technology Transfer Office, Naval Surface Warfare Center Carderock Division, Code 0022, 9500 MacArthur Blvd, West Bethesda, MD 20817–5700, telephone 301–227–4299.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: February 3, 2006.

Eric McDonald,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E6–2120 Filed 2–14–06; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Expression Pathology, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Expression Pathology, Inc., a revocable, non-assignable, exclusive license to practice in the field of consumable slides and other coated substrates for laser microdissection of tissue samples for life science research, and human clinical and veterinary diagnostic applications in the United States and certain foreign countries, the Government-owned inventions described in U.S. Patent No. 6,905,738: Generation of Viable Cell Active Biomaterial Patterns by Laser Transfer, Navy Case No. 79,702.//U.S. Patent No. 6,936,311: Generation of Biomaterial Microarrays by Laser Transfer, Navy Case No. 82,621.//U.S. Patent Application Serial No. 10/863,833: Biological Laser Printing for Tissue Microdissection via Indirect Photon-Biomaterial Interactions, Navy Case No. 96,075.//U.S. Patent Application Serial No. 10/863,850: Biological Laser Printing for Tissue Microdissection via Indirect Photon-Biomaterial Interactions, Navy Case No. 84,621 and any continuations, divisionals or re-issues thereof.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than March 2, 2006.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Ms. Jane Kuhl, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone 202–767–3083. Due to U.S. Postal delays, please fax 202–404–7920, e-mail *kuhl@utopia.nrl.navy.mil*, or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: February 8, 2006.

Eric McDonald,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E6–2136 Filed 2–14–06; 8:45 am]

BILLING CODE 3810–ff–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive Patent License; Nabco, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Nabco, Inc., a revocable, non-assignable, partially exclusive license in the U.S. to practice these Government-owned inventions in the field of use of fabricated metal product manufacturing, machinery manufacturing, transportation equipment manufacturing, as described in: U.S. Patent No. 6,196,107, entitled ''Explosive Containment Device,'' issued March 6, 2001, Navy Case No. 78,946.

DATES: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with Carderock Division, Naval Surface Warfare Center, Code 004, 9500 MacArthur Boulevard, West Bethesda, MD 20817–5700.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Teter Ph.D., Director, Technology Transfer Office, Carderock Division, Naval Surface Warfare Center, Code 0022, 9500 MacArthur Boulevard, West Bethesda, MD 20817–5700, telephone 301–227–4299.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: February 3, 2006.

Eric McDonald,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E6–2119 Filed 2–14–06; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 17, 2006.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 9, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: Revision.

Title: Adult Education Annual Performance and Financial Reports.

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 57.

Burden Hours: 5,700.

Abstract: The information contained in the Annual Performance Reports for Adult Education is needed to monitor the performance of the activities and services funded under the Adult Education and Family Literacy Act of 1998, Report to Congress on the Levels of Performance Achieved on the core indicators of performance, provide necessary outcome information to meet OVAE's Government Performance and Results Act (GPRA) goals for adult education, and provide documentation for incentive awards under Title V of the Workforce Investment Act. The respondents include eligible agencies in 59 states and insular areas.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2971. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to IC *DocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to the e-mail address IC *DocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–2126 Filed 2–14–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On February 7, 2006, the Department of Education published a notice in the **Federal Register** (Page 6276, Column 3) for the information collection, ''Evaluation of the Impact of Literacy Interventions in Freshman Academies—Follow-Up Forms for Students and Teachers.'' This notice hereby corrects the e-mail address for comments regarding burden and/or the collection activity requirements to ''*IC DocketMgr@ed.gov*.'' The IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: February 9, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer.

[FR Doc. E6–2125 Filed 2–14–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Safe and Drug Free Schools; Overview Information; Life Skills for State and Local Prisoners; Notice Inviting Applications for New Awards Using Fiscal Year (FY) 2005 Funds for FY 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.255A

DATES: Applications Available: February 15, 2006.

Deadline for Transmittal of Applications: April 3, 2006.

Deadline for Intergovernmental Review: May 31, 2006.

Eligible Applicants: State or local correctional agencies and State or local correctional education agencies.

Estimated Available Funds: $4,662,000.

Estimated Range of Awards: $315,000–$475,000.

Estimated Average Size of Awards: $388,500.

Estimated Number of Awards: 12.

Note: On October 28, 2005, the President submitted a request to Congress to rescind (cancel) the funds that would otherwise be available for grant awards under this competition. The rescission request is still pending.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Life Skills for State and Local Prisoners Program provides financial assistance for establishing and operating programs designed to reduce recidivism through the development and improvement of life skills necessary for reintegration of adult prisoners into society.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from the statute for this program (20 U.S.C. 1211–2).

Absolute Priority: For FY 2006, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Grants for projects that assist State or local correctional agencies and State or local correctional educational agencies in establishing and operating programs designed to reduce recidivism through the development and improvement of life skills necessary for reintegration of adult prisoners into society.

Program Authority: Section 601 of P.L. 102–73, the National Literacy Act of 1991 (20 U.S.C. 1211–2 (1991)), as incorporated by the Department of Education Appropriations Act, 2005 (P.L. 108–447 at 118 Stat. 3145).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.(b) The regulations for this program in 34 CFR part 490.4.

II. Award Information

Type of Award: Discretionary grants.
Estimated Available Funds: $4,662,000.
Estimated Range of Awards: $315,000–$475,000.
Estimated Average Size of Awards: $388,500.
Estimated Number of Awards: 12.

Note: On October 28, 2005, the President submitted a request to Congress to rescind (cancel) the funds that would otherwise be available for grant awards under this competition. The rescission request is still pending.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

III. Eligibility Information

1. *Eligible Applicants:* State or local correctional agencies and State or local correctional education agencies.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.255A. You may also download the application from the Department of Education's Web site at: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in this section VII. of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

3. *Submission Dates and Times:* Applications Available: February 15, 2006. Deadline for Transmittal of Applications: April 3, 2006.

Applications under this grant competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements. Deadline for Intergovernmental Review: May 31, 2006.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. Electronic Submission of Applications

We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide Grants.gov Apply site in FY 2006. Life Skills for State and Local Prisoners—CFDA 84.255A is one of the programs included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for Life Skills for State and Local Prisoners at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via Grants.gov, you must complete the steps in the Grants.gov registration process (*see http://www.Grants.gov/GetStarted*). These steps include: (1) Registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-step Registration Guide (*see http://www.grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf*). You must also provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (SF 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. Submission of Paper Applications by Mail

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA 84.255A), 400 Maryland Avenue, SW., Washington, DC 20202–4260, or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA 84.255A), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA 84.255A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (SF 424) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and are as follows:

Note: The maximum score for all of these criteria is 100 points. The maximum score for each criterion or factor under that criterion is indicated in parentheses.

(1) *Significance* (20 points)—In determining the significance of the

proposed project, the following factors are considered:

(a) The likelihood that the proposed project will result in system change or improvement.

(b) The extent to which the proposed project is likely to yield findings that may be utilized by other appropriate agencies and organizations.

(2) *Quality of the Project Design* (35 points)—In determining the quality of the design of the proposed project, the following factors are considered:

(a) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(b) The extent to which the proposed project represents an exceptional approach for meeting statutory purposes and requirements.

(c) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(d) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population.

(3) *Quality of Project Services* (15 points)—In determining the quality of the services to be provided by the proposed project, the following factors are considered:

(a) The quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(b) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(c) The likely impact of the services to be provided by the proposed project on the intended recipients of those services.

(4) *Quality of the Management Plan* (10 points)—In determining the quality of the management plan for the proposed project, the following factors are considered:

(a) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(b) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(5) *Quality of the Project Evaluation* (20 points)—In determining the quality of the evaluation, the following factors are considered:

(a) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(b) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary.

4. *Performance Measures:* The Secretary has established the following key performance measure for assessing the effectiveness of the Life Skills for State and Local Prisoners Program:

The number of prisoners who attain measurable gains in one or more of the life skill domains taught under the Life Skills project. This measure reflects the Department's indicator of success for this program. Consequently, applicants for a grant under this program are advised to give careful consideration to this measure in conceptualizing the approach and evaluation of their proposed project. If funded, applicants will be asked to collect and report data to the Department about this measure in their final report.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Carlette Huntley, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E216, Washington, DC 20202. Telephone: (202) 205–7943: or by e-mail: *Carlette.Huntley@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: February 9, 2006.

Deborah A. Price,

Assistant Deputy Secretary for Safe and Drug Free Schools.

[FR Doc. E6–2174 Filed 2–14–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–286–A]

Application To Export Electric Energy; Avista Energy, Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of Application.

SUMMARY: Avista Energy, Inc., (Avista) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before March 17, 2006.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery & Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue,

SW., Washington, DC 20585–0350 (FAX 202–586–5860).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On March 18, 2004, the Department of Energy (DOE) issued Order No. EA–286 authorizing Avista to transmit electric energy from the United States to Canada as a power marketer for a two year term.

On December 19, 2005, Avista filed an application with DOE for renewal of the export authority contained in Order No. EA–286 for an additional five-year term. Avista proposes to export electric energy to Canada and to arrange for the delivery of those exports over the international transmission facilities presently owned by the Bonneville Power Administration.

Procedural Matters

Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the dates listed above.

Comments on the Avista application to export electric energy to Canada should be clearly marked with Docket EA–286-A. Additional copies are to be filed directly with R. Blair Strong, Paine, Hamblem, Coffin, Brooke & Miller LLP, 717 West Sprague Avenue, Suite 1200, Spokane, Washington 99201–3505 and Dave Dickson, Vice President Energy Trading and Marketing, Avista Energy, Inc. 201 W. North River Drive, Suite 610, Spokane, WA 99201.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the program's Home Page at *http://www.fe.doe.gov/programs/electricityregulation/*. Upon reaching the Home page, scroll down and select ''Pending Proceedings.''

Issued in Washington, DC, on February 10, 2006.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery & Energy Reliability.

[FR Doc. E6–2171 Filed 2–14–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting; Notice

February 9, 2006.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: February 16, 2006; 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

***Note—**Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400. For a recorded listing item stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

902ND MEETING; REGULAR MEETING

[February 16, 2006; 10 a.m.]

Item No.	Docket No.	Company
	Administrative Agenda	
A–1	AD02–1–000	Agency Administrative Matters.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
A–3	AD06–3–000	Energy Market Update.
	Energy, Markets, and Reliability—Electric	
E–1	OMITTED.	
E–2	OMITTED.	
E–3	OMITTED.	
E–4	EL06–16–000	Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations.
E–5	ER06–365–000	Entergy Services, Inc., acting as agent for Entergy Operating Companies.
E–6	ER06–375–000	Southern Company Services, Inc.
E–7	ER06–360–000, ER06–361–000, ER06–362–000, ER06–363–000, ER06–372–000, ER06–373–000.	Midwest Independent Transmission System Operator, Inc.
	ER06–366–000	Midwest Independent Transmission System Operator, Inc. and the Transmission Owners of the Midwest Independent Transmission System Operator, Inc.
E–8	ER06–348–000	DTE East China, L.L.C.
E–9	ER01–1099–010, ER01–1099–011, ER99–3855–006, ER03–1368–003.	Cleco Power LLC.
	ER99–2300–008, ER03–1369–003	Cleco Marketing & Trading LLC.

902ND MEETING; REGULAR MEETING—Continued

[February 16, 2006; 10 a.m.]

Item No.	Docket No.	Company
	ER99–2928–007, ER99–2928–008, ER03–1371–003.	Cleco Evangeline LLC.
	ER01–1397–007, ER01–1397–008, ER03–1370–004.	Perryville Energy Partners, L.L.C.
	ER02–1406–011, ER02–1406–012, ER03–1372–004, EL06–4–000.	Acadia Power Partners, LLC.
E–10	ER96–1085–008, ER96–1085–009, EL05–122–000.	South Carolina Electric and Gas Company.
E–11	RM01–10–005	Standards of Conduct for Transmission Providers.
E–12	ER02–2001–005	Electric Quarterly Reports.
	ER03–622–000	Capital Power, Inc.
	ER02–2338–000	Energy Investments Management, Inc.
	ER04–683–000	New Light Energy, LLC.
	ER03–101–000	Premier Energy Marketing, LLC.
	ER02–1499–000	Sprague Energy Corp.
	ER02–1595–000	TME Energy Services.
E–13	ER02–2001–004	Electric Quarterly Reports.
	ER04–0292–000	Bravo Energy Resources, LLC.
	ER04–0646–000	Core Equities, Inc.
	ER02–0388–000	HC Power Marketing.
	ER03–0827–000	Maxim Energy Partners, LLC.
	ER98–4301–000	Mountainview Power Company.
	ER02–1324–000	Mt. Carmel Cogen, Inc.
	ER03–0182–000	Phoenix Energy Associates, L.L.C.
	ER03–0261–000	USP&G (Pennsylvania), Ltd.
E–14	AC04–88–001	NewCorp Resources Electric Cooperative.
E–15	AC04–71–001	Wells Rural Electric Company.
E–16	ER05–150–002, ER05–150–004	California Independent System Operator.
E–17	RM05–6–001	Commission Authorization to Hold Interlocking Positions.
	Energy, Markets, and Reliability—Miscellaneous	
M–1	RM06–2–000	Procedures for Disposition of Contested Audit Matters.
M–2	RM06–13–000	Compliance for Public Utility Market-Based Rate Authorization Holders.
M–3	RM06–14–000	Revisions to Record Retention Requirements for Unbundled Sales Service, Persons Holding Blanket Marketing Certificates, and Public Utility Market-Based Rate Authorization Holders.
	Energy, Markets, and Reliability—Gas	
G–1	RM06–5–000	Amendments to Codes of Conduct for Unbundled Sales Service and for Persons Holding Blanket Marketing Certificates.
G–2	RP05–552–001, RP05–552–002	East Tennessee Natural Gas, LLC.
G–3	RP05–559–001, RP05–559–002	Algonquin Gas Transmission, LLC.
G–4	RP05–553–002, RP05–553–001	Egan Hub Storage, LLC.
G–5	RP02–309–006	*Sunoco, Inc. (R&M)* v. *Transcontinental Gas Pipe Line Corporation.*
G–6	TS04–200–000	CenterPoint Energy Gas Transmission Company.
	TS04–193–000	CenterPoint—Mississippi River Transmission Corporation.
	TS05–4–000	Islander East Pipeline Company, L.L.C.
G–7	RP05–286–001, RP05–286–002	Northwest Pipeline Corporation.
	Energy Projects—Hydro	
H–1	P–2232–476	Duke Power.
H–2	P–2232–475	Duke Power.
H–3	P–2100–139	California Department of Water Resources.
H–4	P–11882–003	Fall River Rural Electric Cooperative, Inc.
H–5	P–2233–047	Portland General Electric Company.
H–6	P–12570–001, P–12563–001, P–12587–001.	Appalachian Rivers Resource Enhancement, LLC.
H–7	P–12552–003	Marseilles Land and Water Company.
H–8	P–2232–500	Duke Power.
	Energy Projects—Certificates	
C–1	CP02–60–007	Trunkline LNG Company, LLC.
C–2	CP05–144–001	Columbia Gas Transmission Corporation.
	CP05–150–001, CP05–151–001, CP05–152–001.	Hardy Storage Company, LLC.

Magalie R. Salas,

Secretary.

A free Webcast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its Webcast. The Capitol Connection provides technical support for the free Webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Perkowski or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in Hearing Room 2. Members of the public may view this briefing in the Commission Meeting overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 06–1436 Filed 2–10–06; 4:23 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2005–0060; FRL–7747–8]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Charter for the Environmental Protection Agency's National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL) has been renewed for an additional 2–year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 sec. 9(c). The purpose of NAC/AEGL is to provide advice and recommendations to the Administrator of EPA on issues associated with development of acute exposure guideline levels for hazardous substances for use in chemical emergency programs. It has been determined that NAC/AEGL is in the public interest in connection with the performance of duties imposed on the Agency by law.

FOR FURTHER INFORMATION CONTACT: For general information contact: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Paul Tobin, Risk Assessment Division (7403M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8557; e-mail address: *tobin.paul@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may be of particular interest to anyone who may be affected if AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPA's Risk Management Program under the Clean Air Act and Amendments Section 112r. It is possible that other Federal agencies besides EPA, as well as State agencies and private organizations, may adopt the AEGL values for their programs. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2005–0060. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the **''Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background

A. What Action is the Agency Taking?

EPA has renewed the charter for the NAC/AEGL Committee for an additional 2–year period. The NAC/AEGL Committee provides advice and recommendations to the Administrator of EPA on issues associated with the development of acute exposure guideline levels for hazardous substances. Acute exposure guideline levels for hazardous substances are used by other Federal agencies, State and local governments, and private organizations for exposure limits in chemical emergency programs. It has been determined that the NAC/AEGL Committee is in the public's interest and is related to the performance of duties imposed on the Agency by law.

B. What is the Agency's Authority for Taking this Action?

The charter for the NAC/AEGL Committee is in accordance with the provisions of FACA, 5 U.S.C. App., section 9(c).

List of Subjects

Environmental protection, Acute exposure guideline levels, Hazardous substances, Public health, Safety, Worker protection.

Dated: February 6, 2006.

Susan B. Hazen,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 06–1353 Filed 2–14–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0471; FRL–7763–7]

FIFRA Scientific Advisory Panel; Notice of Cancellation of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Agency is issuing this notice to cancel a meeting of the FIFRA Scientific Advisory Panel. This meeting was originally announced in the **Federal Register** of January 30, 2006.

FOR FURTHER INFORMATION CONTACT: Myrta R. Christian, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8498; fax number: (202) 564–8382; e-mail addresses: *christian.myrta@epa.gov*.

SUPPLEMENTARY INFORMATION: The April 4-6, 2006, Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) meeting to consider the Review of Worker Exposure Assessment Methods has been cancelled. This meeting was originally announced in the **Federal Register** of January 30, 2006 (71 FR 4910; FRL–7760–1). For further information, please notify the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 8, 2006.

Clifford Gabriel,

Director, Office of Science Coordination and Policy.

[FR Doc. E6–2150 Filed 2–14–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8033–1]

Science Advisory Board Staff Office; Notification of a Public Meeting of the Science Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public meeting of the U.S. EPA Science Advisory Board (SAB).

DATES: A public meeting of the EPA SAB will be held on March 2, 2006 from 8:30 a.m. to approximately 5 p.m. eastern time and on March 3, 2006 from 8:30 a.m. to approximately 3 p.m. eastern time.

ADDRESSES: The meeting will be held at the U.S. EPA Science Advisory Board Staff office, 1025 F Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain further information concerning this meeting may contact Mr. Thomas O. Miller, Designated Federal Officer (DFO), by mail at EPA SAB Staff Office (1400F), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by telephone at (202) 343–9982; by fax at (202) 233–0643; or by e-mail at: *miller.tom@epa.gov*. General information concerning the SAB can be found on the SAB Web site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: The purpose of this meeting will be to allow the SAB to discuss with Agency representatives future research priorities of importance to the achievement of EPA's mission to protect human health and the environment. If any other topics are added to the agenda, they will be reflected in the meeting agenda that will be available on the SAB Web site at: *http://www.epa.gov/sab* (under ''Meeting Agendas'') in advance of the meeting.

Availability of Meeting Materials: Materials in support of this meeting will be placed on the SAB Web site at: *http://www.epa.gov/sab/* in advance of this meeting.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the SAB to consider during the advisory process.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes per speaker, with no more than a total of one hour for all speakers. Interested parties should contact Mr. Miller, DFO, at the contact information noted above, by February 28, 2006, to be placed on the public speaker list for the March 2, 2006 meeting.

Written Statements: Written statements should be received in the SAB Staff Office by February 28, 2006, so that the information may be made available to the SAB for their consideration prior to this meeting. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

Meeting Access: For information on access or services for individuals with disabilities, please contact Mr. Thomas O. Miller at 202–343–9982 or *miller.tom@epa.gov.* To request accommodation of a disability, please contact Mr. Miller, preferably at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: February 9, 2006.

Anthony Maciorowski,

Associate Director for Science, EPA Science Advisory Board Staff Office.

[FR Doc. E6–2144 Filed 2–14–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ORD–2005–0031; FRL–8033–2]

Board of Scientific Counselors, Water Quality Subcommittee Meeting—March 2006

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection

Agency, Office of Research and Development (ORD), gives notice of a meeting of the Board of Scientific Counselors (BOSC) Water Quality Subcommittee.

DATES: A conference call meeting will be held on March 6, 2006 from 10:30 a.m. to 12:30 p.m. eastern time. The meeting may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations during the conference will be accepted up to 1 business day before each conference call date.

ADDRESSES: Conference Call: Participation in the conference call will be by teleconference only—meeting rooms will not be used. Members of the public who wish to obtain the call-in number and access code to participate in a teleconference meeting may contact Bernice L. Smith, Designated Federal Officer, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice, at least four work days prior to each conference call.

Document Availability

Any member of the public interested in receiving a draft agenda for, or making a presentation during the conference call, may contact Bernice L. Smith, Designated Federal Officer, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

In general, each individual making an oral presentation will be limited to a total of three minutes. The draft agendas can also be viewed through EDOCKET, as provided in Unit I.A. of the **SUPPLEMENTARY INFORMATION** section.

Submitting Comments

Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.B. of the **SUPPLEMENTARY INFORMATION** section. Written comments will be accepted up to 1 business day before the conference calls/meeting dates.

FOR FURTHER INFORMATION CONTACT: Bernice L. Smith, Designated Federal Officer, via telephone/voice mail at (202) 343–9766, via e-mail at *smith.bernicel@epa.gov,* or by mail at Environmental Protection Agency, Office of Research and Development, Mail Code 8723–F, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. General Information

Proposed agenda items for the conference calls include, but are not limited to: discussion of the January 25, 2006 poster sessions and the draft final report of the Water Quality BOSC review. The conference call is open to the public.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Bernice L. Smith at (202) 343–9766 or *smith.bernicel@epa.gov.* To request accommodation of a disability, please contact Bernice L. Smith, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

A. How Can I Get Copies of Related Information?

1. Docket. EPA has established an official public docket for this action under Docket ID No. ORD–2005–0031. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Documents in the official public docket are listed in the index in EPA's electronic public docket and comment system, EDOCKET. Documents may be available either electronically or in hard copy. Electronic documents may be viewed through EDOCKET. Hard copies of the draft agendas may be viewed at the Board of Scientific Counselors, Water Quality Research Program Subcommittee—Winter 2006 Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EDOCKET. You may use EDOCKET at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EDOCKET.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EDOCKET at *http://www.epa.gov/edocket,* and follow

the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, *http://www.epa.gov,* select ''Information Sources,'' ''Dockets,'' and ''EDOCKET.'' Once in the system, select ''search,'' and then key in Docket ID No. ORD–2005–0031. The system is an anonymous access system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *ORD.Docket@epa.gov,* Attention Docket ID No. ORD–2005–0031. In contrast to EPA's electronic public docket, EPA's e-mail system is not an anonymous access system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: U.S. Environmental Protection Agency, ORD Docket, EPA Docket Center (EPA/DC), Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. ORD–2005–0031.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. ORD–2005–0031 (note: this is not a mailing address). Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.A.1.

Dated: February 9, 2006.

Kevin Y. Teichman,

Director, Office of Science Policy.

[FR Doc. E6–2154 Filed 2–14–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0493; FRL–7756–2]

Streptomycin Risk Assessments; Notice of Availability and Risk Reduction Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessment(s), and related documents for the pesticide streptomycin, and opens a public comment period on these documents. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a tolerance reassessment decision (TRED) for streptomycin through a modified, 4–Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before April 17, 2006.

ADDRESSES: Comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0493, may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Lance Wormell, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 603–0523; fax number: (703) 308–8041; e-mail address: *wormell.lance@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number EPA–HQ–OPP–2005–0493. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced Federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected

from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number EPA–HQ–OPP–2005–0493. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number EPA–HQ–OPP–2005–0493. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number EPA–HQ–OPP–2005–0493.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number EPA–HQ–OPP–2005–0493. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health risk assessment and related documents for streptomycin, and soliciting public comment on risk management ideas or proposals. Streptomycin is an antibiotic pesticide used primarily to control fire blight in apples and pears. EPA developed the risk assessments and risk characterization for streptomycin through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

The majority of streptomycin is used on apples and pears. Other crops treated include celery, philodendron, tomato, peppers, dieffenbachia cuttings, chrysanthemums, roses, pyracantha, potatoes, and tobacco. Streptomcyin registered formulations include dusts, soluble concentrates, wettable powders, and technical grade streptomycin. These formulations are generally applied by ground or aerial spray; however streptomycin can also be used as a liquid soak, dust treatment, or seed treatment. Streptomycin is also an injectable antibiotic used in humans and animals. These uses are regulated by the US Food and Drug Administration.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessments for streptomycin. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as data on antimicrobial resistant bacteria that may be present in orchards, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

Through this notice, EPA also is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management for streptomycin. EPA did not identify any direct risks of concerns from dietary or residential exposure associated with the use of streptomycin. It is possible that continued use of streptomycin may result in antimicrobial resistant bacteria that may transfer resistance to other bacteria. The Agency solicits information on effective and practical measures to reduce the possibility that antimicrobial resistant bacteria may develop resistance and/or transfer resistance to other bacteria.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to streptomycin, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For streptomycin, a modified, 4–Phase process with one comment period and ample opportunity for public consultation seems appropriate in view of its small number of users and few complex issues. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for streptomycin. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 7, 2006.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 06–1351 Filed 2–14–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0492; FRL–7756–1]

Oxytetracycline Risk Assessments; Notice of Availability and Risk Reduction Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessments, and related documents for the pesticide oxytetracycline, and opens a public comment period on these documents. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a tolerance reassessment decision (TRED) for oxytetracycline through a modified, 4–Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before April 17, 2006.

ADDRESSES: Comments, identified by docket identification (ID) number EPA–

HQ–OPP–2005–0492, may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Lance Wormell, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 603–0523; fax number: (703) 308–8041; e-mail address: *wormell.lance@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number EPA–HQ–OPP–2005–0492. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced Federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number EPA–HQ–OPP–2005–

0492. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number EPA–HQ–OPP–2005–0492. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number EPA–HQ–OPP–2005–0492.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number EPA–HQ–OPP–2005–0492. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health risk assessment and related documents for oxytetracycline, and soliciting public comment on risk management ideas or proposals. Oxytetracycline is an antibiotic pesticide used primarily to control fire blight in pears and bacterial spot in peaches and nectarines. EPA developed the risk assessments and risk characterization for oxytetracycline through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

The majority of oxytetracycline is used on pears, peaches, and nectarines. Oxytetracycline is also approved for emergency use on apples. Oxytetracycline is also used as an injection in trees and ornamental shrubs. Oxytetracycline is generally applied by ground or aerial spray. Oxytetracycline is also approved for use by the US Food and Drug Administration as an oral antibiotic in humans/animals and as a feed additive in animals.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessments for oxytetracycline. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as data on antimicrobial resistant bacteria that may be present in orchards, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

Through this notice, EPA also is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management for oxytetracycline. EPA did not identify any direct risks of concerns from dietary or residential exposure associated with the use of oxytetracycline. It is possible that continued use of oxytetracycline may result in antimicrobial resistant bacteria that may transfer resistance to other bacteria. The Agency solicits information on effective and practical measures to reduce the possibility that bacteria may develop resistance and/or transfer resistance to other bacteria.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to oxytetracycline, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, the Agency

is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For oxytetracycline, a modified, 4–Phase process with one comment period and ample opportunity for public consultation seems appropriate in view of its small number of users and few complex issues. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for oxytetracycline. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 7, 2006.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 06–1352 Filed 2–14–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0258; FRL–7761–8]

Triadimefon Risk Assessments; Notice of Availability and Risk Reduction Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessments, and related documents for the triazole fungicide triadimefon and for its free triazole metabolites, and opens a public comment period on these documents. The triazole fungicides, which include triadimefon, triadimenol, and propiconazole, and others, share the common metabolites 1,2,4–triazole, triazole alanine, and triazole acetic acid (also known as free triazoles). EPA has conducted an aggregate risk assessment for the free triazole metabolites to ensure that aggregate exposure and risk from these common metabolites meet the current safety standards. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for triadimefon through a modified, 4–Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before April 17, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0258; by one of the following methods:

- *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.
- *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA–HQ–OPP–2005–0258. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA –-HQ–OPP–2005–0258. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be captured automatically and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at*http://www.epa.gov/epahome/docket.htm/*.

Docket: All documents in the docket are listed in the regulation.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov/* or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal

holidays. The telephone number for the docket facility is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: John W. Pates, Jr., Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8195; fax number: (703) 308–8041; e-mail address:*pates.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v.If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health and environmental fate and effects risk assessments and related documents for triadimefon, a triazole fungicide, and an aggregate risk assessment for the free triazole metabolites, and encouraging the public to suggest risk management ideas or proposals. Triadimefon is a systemic fungicide used to control rust and mildew on apples, grapes, pears, pineapple, and raspberries. Non-food uses include pine seedlings, Christmas trees, residential and commercial turf, ornamentals, and landscapes. EPA developed the risk assessments and risk characterization for triadimefon through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

Triadimefon is a triazole fungicide. It is used as a preharvest foliar treatment on apples, pears, grapes, raspberries, Christmas trees, and pine seedlings as well as a pre-/post-harvest treatment for pineapple and a pre-plant soak/treatment for pine seeds. Triadimefon products are marketed for homeowner use on residential lawns, landscape ornamentals, trees, fruit trees, and grapes. Triadimefon-containing products are also marketed for use by professional applicators on residential turf, golf courses, other turf such as recreational/commercial areas, and on ornamental plantings. In addition, other triazole fungicides, which may metabolize to triazole conjugates, are formulated into pharmaceutical products which are approved for use by the Food and Drug Administration (FDA).

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessments for triadimefon and for the free triazole metabolites 1,2,4–triazole, triazole alanine, and triazole acetic acid. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as the need for a Developmental Neurotoxicity (DNT) study, information on potential exposure to triazole conjugates from pharmaceutical products, data on actual use patterns including rates, timing, and the kinds of tasks that are required to produce agricultural commodities and other products, as well as triadimefon-specific turf transferrable residue or dislodgeable foliar residue data to help refine exposure and risk estimates, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

Through this notice, EPA also is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management for triadimefon. Risks of concern associated with the use of triadimefon include acute and chronic dietary risks, ecological, residential and worker risks associated with the use on turf, post-application risk to adults (mowing and gardening) and youths/toddlers following application to turf, and worker risk due to inhalation exposure for pine seed treatment. In targeting these risks of concern, the Agency solicits information on effective and practical risk reduction measures.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to triadimefon or its free triazole metabolites, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and

Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For triadimefon, a modified, 4–Phase process with one comment period and ample opportunity for public consultation seems appropriate in view of its refined risk assessments and other factors. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.. The decisions presented in the RED may be supplemented by further risk mitigation measures when EPA considers whether a cumulative assessment is necessary for the triazole group of pesticides.

All comments should be submitted using the methods in **ADDRESSES** and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for Triadimefon. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Triadimefon; Triazole Fungicides, Pesticides and pests.

Dated: February 8, 2006.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E6–2151 Filed 2–14–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP–2006–0038; FRL–7761–7]

Triadimenol Risk Assessments; Notice of Availability and Risk Reduction Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessment, and related documents for the triazole fungicide triadimenol and for its free triazole metabolites, and opens a public comment period on these documents. The triazole fungicides, which include triadimenol, triadimefon, and propiconazole, and others, share the common metabolites 1,2,4–triazole, triazole alanine, and triazole acetic acid (also known as free triazoles). EPA has conducted an aggregate risk assessment for the free triazole metabolites to ensure that aggregate exposure and risk from these common metabolites meet the current safety standards. he public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a tolerance reassessment decision (TRED) for triadimenol through a modified, 4–Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before April 17, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0038, by one of the following methods:

- *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.
- *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA–HQ–OPP–2006–0038. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0038. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be captured automatically and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/docket.htm/*.

Docket: All documents in the docket are listed in the regulation.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov/* or in hard copy at the Public Information and Records

Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: John W. Pates, Jr., Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8195; fax number: (703) 308–8041; e-mail address: *pates.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health risk assessment and related documents for triadimenol, a triazole fungicide, and an aggregate risk assessment for the free triazole metabolites, and encouraging the public to suggest risk management ideas or proposals. Triadimenol is a systemic fungicide used as a seed treatment for barley, corn, cotton, oats, rye, sorghum, and wheat. In addition, other triazole fungicides, which may metabolize to triazole conjugates, are formulated into pharmaceutical products which are approved for use by the Food and Drug Administration (FDA).

Additionally, an import tolerance on bananas has been established. Tolerances are established for residues of triadimenol and its butanediol metabolite in/on various plant commodities and are regulated as metabolites of the fungicide triadimefon. EPA developed the risk assessment and risk characterization for triadimenol through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessment for triadimenol and for the free triazole metabolites 1,2,4-triazoleole alanine, and triazole acetic acid. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as both acute and subchronic neurotoxicity studies, a Developmental Neurotoxicity (DNT) study, information on potential exposure to triazole conjugates from pharmaceutical products, and separate metabolism studies (seed treatment) to confirm residues of concern, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

Through this notice, EPA also is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management for triadimenol. As there are no residential uses associated with triadimenol, the aggregate risk assessment includes exposure from food and drinking water only. Acute and chronic aggregate risks (food and drinking water) are below the Agency's level of concern for all population subgroups. The current risk assessment only addresses risks associated with residues of triadimenol resulting from the use of triadimenol as an active ingredient. There are additional exposures to triadimenol residues that result from the use of the active ingredient triadimefon, because triadimefon degrades to triadimenol, but those exposures have not been aggregated with exposures from the use of triadimenol alone because the risks associated with the active ingredient triadimefon are currently unacceptable. However, once the triadimefon risks have been refined or mitigated, EPA will conduct an aggregate assessment of the risks associated with triadimenol residues that result from the use of both active ingredients, triadimenol and triadimefon. In targeting these potential risks of concern, the Agency solicits comments on assumptions used in the current risk assessment as well as information on effective and practical risk reduction measures.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to

triadimenol or its free triazole metabolites, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For triadimenol, a modified, 4–Phase process with one comment period and ample opportunity for public consultation seems appropriate in view of its refined risk assessment and other factors. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed. The decisions presented in the TRED may be supplemented by further risk mitigation measures when EPA considers whether a cumulative assessment is necessary for the triazole group of pesticides.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for Triadimenol. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Triadimenol; Triazole Fungicides, Pesticides and pests.

Dated: February 8, 2006.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E6–2152 Filed 2–14–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0497; FRL–7761–9]

Propiconazole Risk Assessments; Notice of Availability and Risk Reduction Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessments and related documents for the triazole fungicide propiconazole and for its free triazole metabolites, and opens a public comment period on these documents. The triazole fungicides, which include propiconazole, triadimefon, and triadimenol, and others, share the common metabolites 1,2,4–triazole, triazole alanine, and triazole acetic acid (also known as free triazoles). EPA has conducted an aggregate risk assessment for the free triazole metabolites to ensure that aggregate exposure and risk from these common metabolites meet the current safety standards. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for propiconazole through a modified, 4–Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before April 17, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0497, by one of the following methods:

- *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.
- *E-mail*: *opp-docket@epa.gov*.
- *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA–HQ–OPP–2005–0497. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA –-HQ–OPP–2005–0497. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be captured automatically and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at*http://www.epa.gov/epahome/docket.htm/*.

Docket: All documents in the docket are listed in the regulation.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly

available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov/* or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Christina Scheltema, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703)308–2201; fax number: (703)308–8005; e-mail address: *scheltema.christina@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health and environmental fate and effects risk assessments for propiconazole, a triazole fungicide, and an aggregate risk assessment for the free triazole metabolites, and soliciting public comment on risk management ideas or proposals. EPA developed the risk assessments and risk characterization for propiconazole through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). Propiconazole is a fungicide used on agricultural crops, ornamentals, and turf. It is also registered for antimicrobial uses, in material preservatives (e.g., paint and textiles) and wood preservatives. In addition, other triazole fungicides, which may metabolize to triazole conjugates, are formulated into pharmaceutical products which are approved for use by the Food and Drug Administration (FDA).

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessments for propiconazole and for the free triazole metabolites 1,2,4–triazole, triazole alanine, and triazole acetic acid. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as worker exposure data, information about the wood preservative use, toxicity data showing the effect of propiconazole on nontarget terrestrial organisms, and information on potential exposure to triazole conjugates from pharmaceutical products or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

Through this notice, EPA also is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management for propiconazole. Risks of concern associated with the use of propiconazole include ecological and worker risks associated with the use on turf, and worker and residential risk associated with the wood preservative use. In targeting these risks of concern, the Agency solicits information on effective and practical risk reduction measures.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to propiconazole or its free triazole metabolites, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For propiconazole, a modified, 4-Phase process with one comment period and ample opportunity for public consultation seems appropriate in view

of its refined risk assessments and other factors. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may consider an additional comment period, as needed.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for Propiconazole. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Propiconazole; Triazole Fungicides, Pesticides and pests.

Dated: February 8, 2006.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E6–2153 Filed 2–14–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0145; FRL–7759–3]

Notice of Filing of a Pesticide Petition for the Amendment of a Regulation for the Fungicide Boscalid in or on Strawberry and Berries (Crop Group 13) Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the amendment of a regulation for residues of the fungicide boscalid (BAS 510F), 3-pyridinecarboxamide, 2-chloro-N-(4′-chloro(1,1′-biphenyl)-2-yl in or on strawberry and berries (Crop Group 13) commodities.

DATES: Comments must be received on or before March 17, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0145 and pesticide petition number (PP) 5F6986, by one of the following methods:

- *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.
- *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA–HQ–OPP–2005–0145. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2005–0145. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be captured automatically and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/docket.htm/*.

Docket: All documents in the docket are listed in the www.regulation.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Tony Kish, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9443; e-mail:*kish.tony@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System

(NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under**FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

EPA is printing a summary of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the amendment of regulations in 40 CFR part 180 for residues of the fungicide boscalid (BAS 510F), 3-pyridinecarboxamide, 2-chloro-N-(4′-chloro(1,1′-biphenyl)-2-yl in or on strawberry and berries (Crop Group 13) commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov/*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type OPP docket ID number ''EPA–HQ–OPP–2005–0145.'' Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

Amendment to Existing Tolerance

PP 5F6986. BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709, proposes to amend the tolerances in 40 CFR 180.589 by increasing the tolerance for residues of the fungicide boscalid (BAS 510F), 3-pyridinecarboxamide, 2-chloro-N-(4′-chloro(1,1′-biphenyl)-2-yl in or on the food commodity strawberry from 1.2 to 4.0 parts per million (ppm); and increasing the tolerance in or on the food commodity berries (Crop Group 13) to 8.0 ppm. In plants, the parent residue is extracted using an aqueous organic solvent mixture followed by liquid/liquid partitioning and a column clean-up. Quantitation is by gas chromatography using mass spectrometry (GS/MS). In livestock, the residues are extracted with methanol. The extract is treated with enzymes in order to release the conjugated glucuronic acid metabolite. The residues are then isolated by liquid/liquid partitioning followed by column chromatography. The hydroxylated metabolite is acetylated followed by a column clean-up. The parent and acetylated metabolite are quantitated by gas chromatography with electron capture detection.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 7, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–2147 Filed 2–14–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP–2005–0071; FRL–7759–5]

Notice of Filing of a Pesticide Petition for the Establishment of a Regulation for the Residues of the Fungicide Epoxiconazole in or on Coffee Beans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of a regulation for residues of the fungicide epoxiconazole, (2RS,3SR)–3–(2–chlorophenyl)–2–(4–fluorophenyl)–2–[(1H–1,2,4–triazol–1–yl)methyl] oxirane in or on coffee beans.

DATES: Comments must be received on or before March 17, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP–2005–0071 and pesticide petition number (PP) 0E6128, by one of the following methods:

- *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.
- *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA-HQ-OPP–2005–0071. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA-HQ-OPP–2005–0071. EPA's policy is that all comments received will be included in the public

docket without change and may be made available on-line at *http://www.regulations.gov/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be captured automatically and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/docket.htm/*.

Docket: All documents in the docket are listed in the http://www.regulation.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in http://www.regulations.gov or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Lana Coppolino, Registration Division, (7505C), Office of Pesticide Programs, U. S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; (703) 305–0086; e-mail: *coppolino.lana@epa.gov*.

SUPPLEMENTARY INFORMATION

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
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- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

EPA is printing a summary of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov/*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Tolerance

PP 0E6128. BASF Corporation, Agricultural Products, P.O. Box 13528, Research Triangle Park, NC 27709–3528, proposes to establish a tolerance for residues of the fungicide epoxiconazole, (2RS,3SR)–3–(2–chlorophenyl)–2–(4–fluorophenyl)–2–[(1H–1,2,4–triazol–1–yl)methyl] oxirane in or on food commodity coffee bean at 0.05 parts per million (ppm). Epoxiconazole residues are extracted from coffee beans with

methanol-water. After filtration and precipitation of the interfering matrix components with calcium hydroxide, epoxiconazole is extracted from the aqueous mixture with hexane and chromatographed on silica gel. The samples are then analyzed by GC/ECD. Average recovery from fortified control samples is 90 ± 8% (n=22).

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 7, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–2158 Filed 2–14–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0092 FRL–7761–5]

Pesticide Product; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Comments must be received on or before March 17, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0092, by one of the following methods:

- *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.
- *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA–HQ–OPP–2006–0092. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0092. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be captured automatically and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at*http://www.epa.gov/epahome/docket.htm/*.

Docket: All documents in the docket are listed in the regulation.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov/* or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8097; e-mail address: *bacchus.shanaz@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products:

1. *File Symbol*: 70787–E. *Applicant*: Jabb of the Carolinas, P.O. Box 310, Pine Level, NC 27568. *Product Name*: balEnce. *Type of product*: microbial insecticide, End-use Product. *Active ingredient*: *Beauveria bassiana* HF23 at 1.18%. *Proposed classification/Use*: Microbial pesticide/to control house flies in chicken manure.

2. *File Symbol*: 70787–R. *Applicant*: Jabb of the Carolinas, P.O. Box 310, Pine Level, NC 27568. *Product Name*: *Beauveria bassiana* HF23. *Type of product*: microbial insecticide. *Active ingredient*: *Beauveria bassiana* HF23 at 95%. *Proposed classification/Use*: For formulation into End-use Products.

List of Subjects

Environmental protection, Pesticides and pest.

Dated:

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E6–2160 Filed 2–14–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2004–0325; FRL–7759–4]

Notice of Filing of Revised Pesticide Petitions for the Amendment of a Regulation for the Fungicide Pyraclostrobin and Its Metabolite in or on Pea, Bean and Strawberry Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of revised pesticide petitions proposing the amendment of a regulation for residues of the fungicide pyraclostrobin, carbamic acid, [2-[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-methyl ester, and its metabolite methyl-N-[[[1-(4-chlorophenyl) pyrazol-3-yl]oxy]o-tolyl] carbamate (BF 500–3); expressed as parent compound in or on pea and bean, dried shelled, except soybean (Subgroup 6C of Crop Group 6) and strawberry commodities.

DATES: Comments must be received on or before March 17, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2004–0325 and pesticide petition numbers (PPs) 0F6139 and 4F6850, by one of the following methods:

• *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.

• *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA–HQ–OPP–2004–0325. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2004–0325. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be captured automatically and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/docket.htm/*.

Docket: All documents in the docket are listed in the *www.regulation.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Tony Kish, Registration Division, (7505C), Office of Pesticide Programs, U. S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460–0001; (703) 308–9443; e-mail: *kish.tony@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

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- Animal production (NAICS code 112).
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- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

EPA is printing a summary of revised pesticide petitions received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov/.* To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

Amendment to Existing Tolerance

EPA established a tolerance in pea and bean, dried shelled, except soybean (Subgroup 6C of Crop Group 6) at 0.3 ppm in a **Federal Register** Final Rule dated October 29, 2004, (FR 63083) (FRL–7681–9) conditional on submission of additional field residue data from Region 11. Upon EPA evaluation of the submitted conditional data, the petitioner requested EPA to establish the permanent tolerance at 0.5 ppm.

Similarly, EPA established a temporary tolerance in strawberry at 1.5 ppm in a **Federal Register** Final Rule dated October 29, 2004, conditional on submission of additional field residue data. This temporary tolerance expired December 31, 2005 and is currently at 0.4 ppm. Upon EPA evaluation of the submitted conditional data, the petitioner has requested EPA to establish the permanent tolerance at 1.2 ppm

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 30, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 06–1354 Filed 2–14–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0030; FRL–7758–6]

Ethofenprox; Receipt of Application for Emergency Exemption,Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Louisiana Department of Agriculture and Forestry to use the pesticide ethofenprox (CAS No. 80844–07–1) to treat up to 255,000 acres of rice to control rice water weevil, *Lissorhoptrus oryzophilus*. The Applicant proposes a first food use of this pesticide. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before March 2, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0030, by one of the following methods:

- *http://www.regulations.gov/.* Follow the on-lineinstructions for submitting comments.
- *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs

(OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

Hand Delivery: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA–HQ–OPP–2006–0030. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0030. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be captured automatically and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at*http://www.epa.gov/epahome/docket.htm/*.

Docket: All documents in the docket are listed in the regulation.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov/* or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of PesticidePrograms (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9364; fax number: (703) 308–5433; e-mail address: *Sec-18-Mailbox@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

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vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The Louisiana Department of Agriculture and Forestry has requested the Administrator to issue a specific exemption for the use of ethofenprox on rice to control rice water weevil, *Lissorhoptrus oryzophilus*. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Applicant asserts that the current emergency situation with respect to weevil management has arisen primarily from the continuing, and probably increasing, practice of cultivating crawfish in ponds

in close proximity to rice fields in southern Louisiana. The great majority of crawfish ponds (at least 75%) are close enough to rice fields to be affected by the management practices used in rice. All of the insecticides currently registered for use against the rice water weevil in Louisiana are toxic to crawfish. The use of ethofenprox for weevil control has one significant advantage over currently used liquid products in that it is formulated as a granular and thus there is far less potential for drift. The Applicant states that the estimated economic loss if no effective weevil controls are available is over 8 million dollars.

The Applicant proposes to make no more than two applications of 0.9% ethofenprox to 255,000 acres of rice in Louisiana between March 1 and August 1, 2006. A maximum of 45,645 pounds of active ingredient will be required.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing a first food use of a chemical.

The notice provides an opportunity for public comment on the application.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the Louisiana Department of Agriculture and Forestry.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 31, 2006.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 06–1308 Filed 2–14–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8031–9; EPA–HQ–Docket ID No. ORD–2006–0116]

Harmonization in Interspecies Extrapolation: Use of BW¾ as Default Method in Derivation of the Oral RfD

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: EPA is announcing a 60-day public comment period for the draft document titled, ''Harmonization in Interspecies Extrapolation: Use of BW¾ as Default Method in Derivation of the Oral RfD'' (EPA/630/R–06/001), which was prepared by the EPA's Risk Assessment Forum (Forum).

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination. EPA will consider any public comments submitted in accordance with this notice when revising the document.

DATES: The 60-day public comment period begins February 15, 2006, and ends April 17, 2006. Technical comments should be in writing and must be received by EPA by April 17, 2006.

ADDRESSES: The draft, ''Harmonization in Interspecies Extrapolation: Use of BW¾ as Default Method in Derivation of the Oral RfD,'' is available primarily via the Internet on the Risk Assessment Forum's home page at *http://cfpub.epa.gov/ncea/raf/index.cfm.* A limited number of paper copies are available from the Technical Information Staff, NCEA–W; telephone: 202–564–3261; facsimile: 202–565–0050. If you are requesting a paper copy, please provide your name, your mailing address, and the document title, ''Harmonization in Interspecies Extrapolation: Use of BW¾ as Default Method in Derivation of the Oral RfD.''

Comments may be submitted electronically, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.*

For technical information, please contact Resha M. Putzrath, Risk Assessment Forum; telephone: 202–564–3229; facsimile: 202-565–0062; or e-mail: *putzrath.resha@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Document

The Agency endorses a hierarchy of approaches to derive human equivalent oral exposures from data from laboratory animals, with the preferred approach being physiologically based toxicokinetic modeling. Intermediate approaches include using some chemical-specific information. In lieu of data to support either of these approaches, body weight scaling to the 3/4 power (BW¾) would be endorsed as a general default procedure to extrapolate toxicologically equivalent doses of chronic orally administered agents from laboratory animals to humans for the purpose of deriving an oral Reference Dose (RfD). Use of BW¾ in derivation of RfD values would be parallel with current Agency use in derivation of cancer oral slope factors. Thus, this paper would harmonize the two main Agency oral dose-response extrapolation procedures. This generalized default procedure is viewed as an informed, species-specific, dosimetric adjustment factor (DAF) that addresses predominantly toxicokinetic and some toxicodynamic aspects of the interspecies uncertainty factor UF_A. Use of this procedure would result in derivation of a human equivalent exposure, specifically a human equivalent dose (HED) that is to be used in derivation of the oral RfD in a manner parallel to the human equivalent concentration (HEC) in derivation of an inhalation RfC.

II. How to Submit Technical Comments to the Docket

Submit your comments, identified by Docket ID No. EPA–HQ–ORD 2006–0116, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *ORD.Docket@epa.gov.*
- Fax: 202–566–1753.
- Mail: Office of Environmental Information Docket (Mail Code: 28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752; facsimile: 202–566–1753.

If you provide comments in writing, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

- Hand delivery/courier: The Office of Environmental Information (OEI) Docket is located in the Headquarters EPA Docket Center (EPA/DC), EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744, and the telephone number for the OEI Docket is 202–566–1752; facsimile: 202-566-1753; or e-mail: *ORD.Docket@epa.gov.* Such deliveries

are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2006–0116. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center home page at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov index.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Office of Environmental Information (OEI) Docket (EPA/DC), EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744, and the telephone number for the OEI Docket is 202–566–1752; facsimile 202-566–1753.

Dated: February 7, 2006

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. E6–2146 Filed 2–14–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8031–7]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 6922(h)(1), notice is hereby given of a proposed administrative settlement concerning the Union Creosoting Superfund Site (Site). The Site is located on approximately four acres of land adjacent to Parish Road 5404 in Farmerville, Union Parish, Louisiana. The geographic center of the site is located at Latitude 32°43′44″ North and Longitude 92°25′42″ West as scaled from the United States Geological Survey (USGS).

The settlement requires the Settling Party, Mr. Jack W. Clampit to pay a total of $13,688.00 for reimbursement of past response costs to the EPA Hazardous Substance Superfund. The settlement includes a covenant not to sue which includes, but is not limited to: (1) Any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund pursuant to sections 106(b)(2), 107, 111, 112, and 113 of CERCLA, 42 U.S.C. 9606(b)(2), 9607, 9611, 9612, or 9613; (2) any claims arising out of the response actions at or in connection with the Site; and (3) any claims against the United States pursuant to sections 107 and 113 of CERCLA, 42 U.S.C. 9607 and 9613, relating to the Site.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733.

DATES: Comments must be submitted on or before March 17, 2006.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733. A copy of the proposed settlement may be obtained from Kenneth Talton, 1445 Ross Avenue, Dallas, Texas 75202–2733 at (214) 665–7475. Comments should reference the Union Creosoting Superfund Site, Farmerville, Louisiana, EPA Docket Number 06–01–05 and should be addressed to Kenneth Talton at the address listed above.

FOR FURTHER INFORMATION CONTACT: Joseph Compton, 1445 Ross Avenue, Dallas, Texas 75202–2733 at (214) 665–8506.

Dated: February 3, 2006.

Lawrence E. Starfield,

Deputy Regional Administrator, Region 6.

[FR Doc. E6–2143 Filed 2–14–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2006–0106; FRL–7763–6]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from January 16, 2006 to January 31, 2006, consists of the PMNs pending or expired, and the notices of commencement to

manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments, identified by the docket ID number EPA–HQ–OPPT–2006–0106 and the specific PMN number or TME number, must be received on or before March 17, 2006.

ADDRESSES: Comments/may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number EPA–HQ–OPPT–2006–0106. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744, and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005 by an enhanced federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic

public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number EPA–HQ–OPPT–2006–0106. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number EPA–HQ–OPPT–2006–0106 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–200X–0106 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from January 16, 2006 to January 31, 2006, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 35 PREMANUFACTURE NOTICES RECEIVED FROM: 01/16/06 TO 01/31/06

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–06–0241	01/13/06	04/12/06	CBI	(G) Additive in inks and coatings	(G) Polyester acrylate

I. 35 PREMANUFACTURE NOTICES RECEIVED FROM: 01/16/06 TO 01/31/06—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–06–0242	01/13/06	04/12/06	CBI	(S) Site limited intermediate; surfactant	(G) Alklyloxypropyloxypropylamine
P–06–0243	01/17/06	04/16/06	CBI	(S) Site limited intermediate; surfactant	(G) Alkyloxypropanol
P–06–0244	01/17/06	04/16/06	Forbo Adhesives, LLC	(G) Hot melt polyurethane adhesive	(G) Isocyanate functional polyester polyether urethane polymer
P–06–0245	01/17/06	04/16/06	Hanse Chemie USA, Inc.	(G) Dispersion additive	(G) Siloxanes and silicones, di-me, 3-hydroxypropyl me, ethers with polyalkylene glycol mono[2-hydroxy-3-[[6-(oxiranylalkoxy)alkyl]oxy]alkyl-carbomonocyclicdicarboxylate]
P–06–0246	01/17/06	04/16/06	Degussa Corporation	(G) Polymer admixture for cements	(G) Modified ketone resin, sodium salt
P–06–0247	01/17/06	04/16/06	CBI	(G) Corrosion control in oil, gas wells and oil and gas pipe lines	(G) Alkylamine ethoxylated
P–06–0248	01/17/06	04/16/06	CBI	(S) Base resin for ultraviolet light and electron beam curable formulations	(G) Poly[oxy(methyl-1,2-ethanediyl)], .alpha.-hydro-.omega.-hydroxy-, polymer with 1,3-diisocyanatomethylbenzene, 2-hydroxyethyl acrylate- and hydroxy functional aliphatic alcohol-blocked
P–06–0249	01/18/06	04/17/06	CIBA Specialty Chemicals Corporation	(S) Metal deactivator for use in lubricant and hydraulic systems	(G) Cyclohexylalkylether substituted benzotriazole
P–06–0250	01/18/06	04/17/06	CBI	(G) Agent for screen printing	(G) Ethylene glycol alkyl ether
P–06–0251	01/20/06	04/19/06	CBI	(G) Polymer for cleaning formulations	(G) Sodium salt of the copolymer of acrylic acid, methyl methacrylate, p-sulfophenymethallyether, sodium salt, sodium methallysulfonate, 2-acrylamido-2-methylpropane sulfonic acid sodium salt
P–06–0252	01/20/06	04/19/06	CBI	(G) Open non dispersive (plasticizer)	(G) Aliphatic thermoplastic polyurethane
P–06–0253	01/20/06	04/19/06	CBI	(G) Open non dispersive (plasticizer)	(G) Aliphatic thermoplastic polyurethane
P–06–0254	01/20/06	04/19/06	CBI	(G) Open non dispersive (plasticizer)	(G) Aliphatic thermoplastic polyurethane
P–06–0255	01/23/06	04/22/06	CBI	(S) Solid matrix for fragrance in toilet rim-block application	(S) Fatty acids, C_{18}-unsaturated, dimers, hydrogenated, polymers with 1,4-cyclohexanedicarboxylic acid, polyethylene-polypropylene glycol bis(2-aminopropyl) ether, polypropylene glycol diamine and propionic acid
P–06–0256	01/23/06	04/22/06	CBI	(S) Solid matrix for fragrance in toilet rim-block application	(S) Fatty acids, C_{18}-unsaturated, dimers, polymers with 1,4-cyclohexanedicarboxylic acid, polyethylene-polypropylene glycol bis(2-aminopropyl) ether, polypropylene glycol diamine and propionic acid
P–06–0257	01/23/06	04/22/06	CBI	(S) Solid matrix for fragrance in toilet rim-block application	(S) 1,4-cyclohexanedicarboxylic acid, polymer with .alpha.-(2-aminomethylethyl)-.omega.-(2-aminomethylethoxy) poly [oxy(methyl-1,2-ethanediyl)], hexanedioic acid and methyloxirane polymer with oxirane bis(2-aminopropyl) ether, polyethylene-polypropylene glycol 2-aminopropyl me ether-terminated
P–06–0258	01/23/06	04/22/06	CBI	(G) Industrial adhesive	(G) Isocyanate functional urethane prepolymer
P–06–0259	01/23/06	04/22/06	Orica Watercare	(S) Catalyst for the hydrolsis of organophosphates in contaminated solutions/surfaces (dispersive use).	(S) *Escherichia coli*, bl21 de3 (pet-opda), lysate.
P–06–0260	01/24/06	04/23/06	CIBA Specialty Chemicals Corporation	(S) Exhaust application to cotton fabrics	(G) Naphthalenesulfonic acid azo substituted naphthyl amino substituted triazine amino phenyl sulfonyl alkyl salt compound

I. 35 PREMANUFACTURE NOTICES RECEIVED FROM: 01/16/06 TO 01/31/06—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–06–0261	01/25/06	04/24/06	CBI	(G) Ribbon or foil for graphic use (thermal transfer ribbon)	(G) Alkylenediol, dialkyl-, polymer with isocyanato (isocyanatoalkyl) trialkylcycloalkane, dipentaerythritol acrylate- and pentaerythritol acrylate-blocked, homopolymer
P–06–0262	01/26/06	04/25/06	Champion Technologies	(S) Intermediate for a hydrate inhibitor for oil and gas wells, production pipelines and flowlines	(G) Dialkylcocoamidoalkylamine
P–06–0263	01/26/06	04/25/06	Champion Technologies	(S) Hydrate inhibitor for oil and gas wells, production pipelines and flowlines	(G)Dialkyl cocoamidoalkylate dialkylcocoamidoal kylbetaine
P–06–0264	01/26/06	04/25/06	Champion Technologies	(S) Hydrate inhibitor for oil and gas wells, production pipelines and flowlines	(G) Dialkylcocoamidoalkylpropionate
P–06–0265	01/26/06	04/25/06	Champion Technologies	(S) Intermediate for a hydrate inhibitor for oil and gas wells, production pipelines and flowlines	(G) Dialkylcornoilamidoalkylamine
P–06–0266	01/26/06	04/25/06	Champion Technologies	(S) Hydrate inhibitor for oil and gas wells, production pipelines and flowlines	(G) Dialkylcornoilamidoacrylate / dialkylcornoilamidoalkylbetaine
P–06–0267	01/26/06	04/25/06	Champion Technologies	(S) Hydrate inhibitor for oil and gas wells, production pipelines and flowlines	(G) Dialkylcornoilamidopropionate
P–06–0268	01/26/06	04/25/06	Yh America, Inc., Sealant Division	(S) Curing agents for epoxide and urethane	(S) *N,n*′ - di (1-methyl-isobutylyden) -2,5 (or 2,6) - bicyclco [2,2,1] heptane bis (methylamine)
P–06–0269	01/26/06	04/25/06	CBI	(G) Plastic additive	(S) Fatty acids, $C_{16—18}$, C_9-rich $C_{8–10}$-isoalkyl esters
P–06–0270	01/26/06	04/25/06	CBI	(G) Plastic additive	(S) Fatty acids, $C_{16–18}$, isononyl esters
P–06–0271	01/23/06	04/22/06	Robertet, Inc.	(S) As an odoriferous component of fragrance compounds	(S) Oils, agathosma ovata
P–06–0272	01/27/06	04/26/06	CBI	(G) Adhesive	(G) Alkylenedicarboxylic dichloride, polymer with dihydroxybenzene
P–06–0273	01/27/06	04/26/06	Huntsman LLC	(S) Surfactants for detergents formulations	(S) Fatty acids, soya, esters with polyethylene glycol mono-me ether
P–06–0274	01/27/06	04/26/06	Huntsman LLC	(S) Surfactants for detergents formulations	(S) Fatty acids, $C_{16–18}$ and C_{18}-unsaturated, esters with polyethylene glycol mono-me ether
P–06–0275	01/27/06	04/26/06	Huntsman LLC	(S) Surfactants for detergents formulations	(S) Poly(oxy-1,2-ethanediyl), .alpha.-(1-oxohexadecyl)-.omega.-methoxy-

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 15 NOTICES OF COMMENCEMENT FROM: 01/16/06 TO 01/31/06

Case No.	Received Date	Commencement Notice End Date	Chemical
P–01–0457	01/25/06	12/15/05	(G) Alkyl alkoxy silane
P–03–0641	01/26/06	01/21/06	(S) Alcohols, $C_{13–15}$-branched and linear, ethoxylated
P–04–0921	01/20/06	01/03/06	(G) Alkaryl sulfonic acid, metal salts
P–05–0431	01/20/06	01/12/06	(G) 2,5-furandione, polymer with ethane and 1-propene, reaction product with aryl amine
P–05–0542	01/26/06	01/09/06	(G) Alkanedioic acid, polymer with 1,3-diisocyanatomethylbenzene, 2,2-dimethyl-1,3-propanediol, 3-hydroxy-2-(hydroxymethyl)-2-methylpropanoic acid and 2,2'-[(1-methylethylidene)bis(4,1-phenyleneoxy)]bis[ethanol], 2-ethyl-2-[[2-(hydroxymethyl)-2-[[(1-oxo-2-propenyl)oxy]methyl]butoxy]methyl]-1,3-propanediyl diacrylate blocked, compounds with triethylamine
P–05–0644	01/26/06	01/06/06	(G) 2-propenoic acid ester polymer, compound with substituted aromatic derivative
P–05–0667	01/24/06	01/13/06	(S) Phenol, 2-ethoxy-4-(4,4,6-trimethyl-1,3-dioxan-2-yl)-
P–05–0703	01/26/06	01/25/06	(G) 1,4-benzenedicarboxylic acid, polymer with alkenedioic acid, alkyl diols, and, 2-hydroxy-3-[(2-methyl-1-oxo-2-propenyl)oxy]propyl ester
P–05–0715	01/26/06	01/13/06	(G) Polysulfide adduct
P–05–0764	01/24/06	01/20/06	(G) Substituted pyrazole-3-carboxylic acid azo dye, metal salt

II. 15 NOTICES OF COMMENCEMENT FROM: 01/16/06 TO 01/31/06—Continued

Case No.	Received Date	Commencement Notice End Date	Chemical
P–05–0765	01/24/06	01/20/06	(G) Substituted benzenedicarboxylic acid anthraquinone dye, metal salt
P–05–0796	01/30/06	01/16/06	(G) Hydroxyalkanoic acid polymer with alkyl isocyanate, oxime-blocked, compounds with 2-(dimethylamino)ethanol
P–05–0817	01/13/06	01/11/06	(G) Alkanol, reaction products with epichlorohydrin and thiohydroxyalkanol
P–05–0837	01/19/06	01/09/06	(G) Fats and glyceridic oils mixed with alkenyl ester, sulfurized
P–98–0701	01/23/06	12/20/05	(G) Mixed alkylmetallic mercaptoester sulfides

List of Subjects

Environmental Protection, Chemicals, Premanufacturer Notices.

Dated: February 8, 2006.

Carolyn Thornton,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E6–2155 Filed 2–14–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8031–8]

Marine Sanitation Device Standard; Casco Bay, Maine; Receipt of Petition

Notice is hereby given that a petition has been received from the State of Maine requesting a determination by the Regional Administrator, U. S. Environmental Protection Agency, pursuant to Section 312(f)(3) of Public Law 92–500 as amended by Public Law 95–217 and Public Law 100–4, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the Casco Bay area.

The area of the Bay to be included in the designation includes all contiguous waters north and east of 43°33′56.04″ N–70°11′48.22″ W at Cape Elizabeth Light in Cape Elizabeth, to a point 43°42′17.65″ N–69°51′17.70″ W at Bald Point in Phippsburg. The southern boundary is a straight line between the points, however it does not include any waters outside of the three mile limit. The area also includes the navigable reaches of the Fore River, Presumpscot River, Royal River, Cousins River, Harraseeket River, and the New Meadows River.

The coastal towns bordering the proposed No Discharge Area are: Cape Elizabeth, South Portland, Portland, Long Island, Falmouth, Cumberland, Yarmouth, Freeport, Brunswick, Harpswell, West Bath, and Phippsburg. There are eleven inland towns which border the six rivers that are included in this proposed No Discharge Area designation.

The State of Maine has certified that there are twenty pumpout facilities located within the proposed area and a list of the facilities, phone numbers, locations, and hours of operation is appended at the end of this petition. There are 11 fixed shore-based facilities, seven portable facilities, one pumpout boat, and one dump stations. The majority of the pumpout facilities discharge directly to town sewer systems or are collected in a holding tank and then properly disposed by a licensed waste hauler to an off site facility.

In addition, there are approximately 19 large marinas, docking areas, and boatyards within the proposed No Discharge Area, the majority of which have restrooms available for their patrons.

The State of Maine has provided documentation indicating that the total vessel population is estimated to be 4896 in the proposed area. Of these, approximately 3476 are identified as recreational, 1420 are identified as commercial, and the transient vessel population is estimated to be 1288, which is included in the total figure. It is estimated that 3897 or approximately 80% of the total vessel population may have a Marine Sanitation Device (MSD) of some type. The state of Maine is within the ratio of pumpouts to boats from the EPA guidance (300–600 vessels for every one facility).

The coastline and coastal waters within the proposed NDA contain a variety of rich natural habitats and support a wide diversity of species, providing a range of recreational and commercial activities. There are 22 boat ramps, numerous lighthouses, seven historical forts, two state parks, and twenty-two individual harbors. One of the largest cities in Maine is located in the proposed area and the tourist traffic from day trips, ferry cruises, fishing and whale watching excursion is a major contributor to the area economy.

Casco Bay is part of the National Estuary Program, having been designated an ''estuary of national significance'' by EPA in 1990. The Maine coastal area is also part of the larger ecosystem of the Gulf of Maine, which is the subject of an international ecosystem management program involving the United States and Canada.

The proposed area has a variety of rich natural habitats, and supports a wide diversity of species. It has approximately 500 acres of rocky shore that supports seaweeds, periwinkles, mussels, barnacles, and crabs. There are approximately 150 species of water birds, two species of seals, four species of whales, two species of dolphins and harbor porpoises. Both recreational and commercial shell fishermen use the area for the harvest of soft shell clams, mussels, scallops, and surf clams. The flats support commercial harvests of sandworms and bloodworms. In addition Casco Bay supports recreational and commercial fishing and the species found in the area are pollock, sculpin, skate, winter flounder, and smelt.

Comments and reviews regarding this request for action may be filed on or before April 17, 2006. Such communications, or requests for information or a copy of the applicant's petition, should be addressed to Ann Rodney, U. S. Environmental Protection Agency—New England Region, One Congress Street, Suite 1100, COP, Boston, MA 02114–2023. Telephone: (617) 918–1538.

LIST OF PUMPOUTS IN THE PROPOSED AREA

Location/waterbody	Name/company	Contact information	Hours of operation	Minimum depth
New Meadows River, Brunswick.	New Meadows Marina	207–443–6277, VHF CH 9	June–Sept., 8am–5pm M–F Weekend by appt.	4′
Merepoint Bay, Brunswick	Paul's Marina	207–729–3067, VHF 9	June–Sept., Self Serve 24/7	10′
Casco Bay, Falmouth	Falmouth Public Landing	207–781–7317, VHF 9	June–Sept., Self Serve 24/7	10′
Casco Bay, Falmouth	Handy Boat	207–781–5110, VHF 9	June–Sept., 8am–8pm 7 days	4′
Casco Bay, Freeport	Brewers South Freeport Marine	207–865–3181, VHF 9	June–Sept., 8am–8pm 7 days	10′
Casco Bay, Freeport	Strouts Point Wharf	207–865–3899, VHF 9	June–Sept., 8am–8pm 7 days	10′
Potts Harbor, Harpswell	Dolphin Marine Services	207–833–6000, VHF 9	June–Sept., 8am–8pm 7 days	10′
Orrs Harbor, Harpswell	Great Island Boatyard	207–729–1639, VHF 9	June–Sept., 8am–8pm 7 days	10′
Sebasco Harbor, Phippsburg	Sebasco Harbor Resort	207–389–1161, VHF 9	June–Sept., 8am–8pm 7 days	6′
Diamond Cove, Portland	Diamond Cove Marina	207–766–5850, VHF 9	June–Sept., 8am–8pm 7 days	6′
Portland Harbor, Portland	DiMillos Old Port Marina	207–773–7632, VHF 9	May–Oct., 8am–8pm 7 days	10′
Portland Harbor, Portland	Maine Yacht Center	207–842–9000, VHF 9	June–Sept., 8am–8pm 7 days	10′
Portland Harbor, Portland	Portland Yacht Services	207–774–1067, VHF 9	June–Sept., 8am–8pm 7 days	10′
Fore River, South Portland	City of South Portland	207–767–3201, VHF 9	June–Sept., 8am–8pm 7 days	6′
Casco Bay, South Portland	Friends Of Casco Bay	207–776–0136, VHF 9	June–Sept., By apt	10′
Portland Harbor, South Portland.	South Port Marine	207–799–8191, VHF 9	June–Sept., 8am–8pm 7 days	4′
Portland Harbor, South Portland.	Spring Point Marina	207–767–3213, VHF 9	June–Sept., 8am–8pm 7 days	10′
Portland Harbor, South Portland.	Sunset Marina	207–767–4729, VHF 9	June–Sept., 8am–8pm 7 days	6′
Portland Harbor, South Portland.	Aspasia Marina	207–767–3010, VHF 9	June–Sept., 8am–8pm 7 days	10′
Royal River, Yarmouth	Yankee Marina	207–846–4326, VHF 9	June–Sept., 8am–8pm 7 days	6′
Royal River, Yarmouth	Yarmouth Boat Yard	207–846–9050, VHF 9	June–Sept., 8am–8pm 7 days	10′

Dated: February 5, 2006.

Robert W. Varney,

Regional Administrator, New England—Region 1.

[FR Doc. E6–2141 Filed 2–14–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2757]

Petition for Reconsideration of Action in Rulemaking Proceeding

February 3, 2006.

A Petition for Reconsideration has been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to this petition must be filed by March 2, 2006. *See* Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (MM Docket No. 05–49).

In the Matter of Implementation of Section 340 of the Communications Act (MM Docket No. 05–49).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 06–1365 Filed 2–14–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2756]

Petition for Reconsideration of Action in Rulemaking Proceeding

February 3, 2006.

A Petition for Reconsideration has been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to this petition must be filed by March 2, 2006. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Caseville and Pigeon, Michigan) (MM Docket No. 01–229).

In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Harbor Beach and Lexington, Michigan) (MM Docket No. 01–231).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 06–1367 Filed 2–14–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2758]

Petitions for Reconsideration of Action in Rulemaking Proceeding

February 9, 2006.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC, or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by March 2, 2006. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)).

Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Review of the Emergency Alert System (EB Docket No. 04–296).

Number of Petitions Filed: 2.

William F. Caton,

Deputy Secretary.

[FR Doc. 06–1448 Filed 2–14–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

* * * * *

PREVIOUSLY SCHEDULED DATE AND TIME: Tuesday, February 7, 2006, meeting closed to the public. This meeting was rescheduled to Thursday, February 9, 2006, at the conclusion of the open meeting.

* * * * *

PREVIOUSLY SCHEDULED DATE AND TIME: Thursday, February 16, 2006, meeting open to the public. This meeting was cancelled.

* * * * *

DATE AND TIME: Tuesday, February 21, 2006 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Tuesday, February 23, 2006 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Final Audit Report on CWA COPE Political Contributions Committee.

Final Rules and Explanation and Justification for the Definitions of ''To Solicit'' and ''To Direct'' (11 CFR 300.2(m) and (n)).

Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 06–1485 Filed 2–13–06; 2:54 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 008493–025.

Title: Trans-Pacific American Flag Berth Operators Agreement.

Parties: American President Lines, Ltd., and A.P. Moller-Maersk A/S.

Filing Party: Howard A. Levy, Esq., 80 Wall Street, Suite 1117, New York, NY 10005–3602.

Synopsis: The amendment changes Maersk's d/b/a to Maersk Line.

Agreement No.: 010714–039.

Title: Trans-Atlantic American Flag Liner Operators Agreement.

Parties: A.P. Moller-Maersk A/S; American President Lines, Ltd.; American Roll-On Roll-Off Carrier, LLC; and CP Ships (USA) LLC.

Filing Party: Howard A. Levy, Esq., 80 Wall Street, Suite 1117, New York, NY 10005.

Synopsis: The amendment changes Maersk's d/b/a to Maersk Line and deletes Farrell Line Inc. and P&O Nedlloyd Limited as agreement members.

Agreement No.: 011407–010.

Title: Australia/United States ContainerLine Association.

Parties: Hamburg-Süd; Australia-New Zealand Direct Line; and CP Ships USA, LLC.

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell, LLP, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment deletes P&O Nedlloyd Limited as a party to the agreement.

Agreement No.: 011547–019.

Title: Eastern Mediterranean Discussion Agreement.

Parties: Farrell Lines, Inc.; COSCO Container Lines Co. Ltd.; China Shipping Container Lines Co., Ltd.; A.P. Moller-Maersk A/S; Mediterranean Shipping Company, S.A.; P&O Nedlloyd Limited; Turkon Container Transportation & Shipping, Inc.; and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment deletes Hapag-Lloyd Container Linie GmbH as a party to the agreement and changes Maersk's d/b/a to Maersk Line.

Agreement No.: 011660–005.

Title: Administrative Housekeeping Agreement.

Parties: A.P. Moller-Maersk A/S; American President Lines, Ltd.; American Roll-On Roll-Off Carriers, LLC; and CP Ships (USA) LLC.

Filing Party: Howard A. Levy, Esq., 80 Wall Street, Suite 1117, New York, NY 10005.

Synopsis: The amendment changes Maersk's d/b/a to Maersk Line and deletes Farrell Line Inc. and P&O Nedlloyd Limited from the TAAFLO members list.

Agreement No.: 011733–017.

Title: Common Ocean Carrier Platform Agreement.

Parties: A.P. Moller-Maersk A/S; P&O Nedlloyd Limited; Hamburg-Süd; Mediterranean Shipping Company, S.A.; CMA–CGM, S.A.; Hapag Lloyd Container Linie GmbH; and United Arab Shipping Company (S.A.G.) as shareholder parties; and Alianca Navegacao e Logistica Ltda.; Safmarine Container Lines N.V.; Nippon Yusen Kaisha; CP Ships Limited; Tasman Orient Line C.V.; Mitsui O.S.K. Lines, Ltd.; CP Ships (USA) LLC; Kawasaki Kisen Kaisha, Ltd.; FESCO Ocean Management Ltd.; Senator Lines GmbH; Compania Sud Americana de Vapores, S.A.; Companhia Libra de Navegacao; and Norasia Container Lines Limited as non-shareholder parties.

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell LLP, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment adds MISC Berhad as a non-shareholder party to the agreement.

Agreement No.: 011940.

Title: CMA CGM/Maruba Cross Space Charter, Sailing, and Cooperative Working Agreement.

Parties: CMA CGM, S.A. and Maruba S.A.

Filing Party: Paul M. Keane, Esq., Cichanowicz, Callan, Keane, Vengrow & Textor, LLP, 61 Broadway, Suite 3000, New York, NY 10006–2802.

Synopsis: The agreement authorizes the parties to share vessel space in the trades between the U.S. West Coast, on the one hand, and the West Coasts of

South and Central America, and China, Taiwan, and South Korea, on the other hand.

Agreement No.: 201143–007.

Title: West Coast MTO Agreement.

Parties: APM Terminals Pacific, Ltd.; California United Terminals, Inc.; Eagle Marine Services, Ltd.; International Transportation Service, Inc.; Long Beach Container Terminal, Inc.; Seaside Transportation Service, LLC; Trans Pacific Container Service Corporation; Total Terminals, LLC; West Basin Container Terminal, LLC; Yusen Terminals, Inc.; Pacific Maritime Services, L.L.C.; and SSA Terminal (Long Beach), LLC.

Filing Party: David F. Smith, Esq., Sher & Blackwell LLP, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment deletes Husky Terminals and Stevedoring, Inc. and Trans Bay Container Terminal, Inc. as parties to the agreement.

By order of the Federal Maritime Commission.

Dated: February 10, 2006.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–2161 Filed 2–14–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel—Operating Common Carrier Ocean Transportation Intermediary Applicant:

Bel Transportation, Inc., 1734 W. 149th Street, #C, Gardena, CA 90247. *Officers:* Bobby Hwang, Vice President, (Qualifying Individual), Eui S. Cheon, President.

Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Leverette Logistics, LLC, 1096 Ingleside Avenue, Jacksonville, FL 32205. *Officer:* Lucius D. Leverette, President, (Qualifying Individual).

Neptune One, Inc., 3608 S.W. 166 Avenue, Miramar, FL 33027. *Officers:* Ersia I. Manrique, President, (Qualifying Individual), Hector R. Sotolongo, Director.

Latex Logistics USA Inc., One Cross Island Plaza, Suite 203E, Rosedale, NY 11422. *Officers:* Angel J. Pipitone, President, (Qualifying Individual), Mustafa Silan, Vice President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

Axiom Trade Inc., Kennedy Avenue Mai Center, Suite 210, San Juan, PR 00920. *Officer:* Paulette Diaz, President, (Qualifying Individual).

Mudanza La Gaviota Shipping Inc., 468 Roseville Avenue, Newark, NJ 07107. *Officer:* Manuel Alvarez, President, (Qualifying Individual).

Superior Global Logistics, 28300 Industrial Blvd., Suite B, Hayward, CA 94545. *Officers:* Robert Glaviano, President, (Qualifying Individual).

Dated: February 10, 2006.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–2162 Filed 2–14–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 1, 2006.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Katherine Buland, Waseca, Minnesota; Elizabeth Danger, Prior Lake, Minnesota; Ann Gaytko, Waseca, Minnesota; James Sankovitz, Chaska, Minnesota; and Thomas Sankovitz, Waseca, Minnesota;, to acquire voting shares of Frankson Investment Corporation, Waseca, Minnesota, and thereby indirectly acquire control of The First National Bank of Waseca, Waseca, Minnesota.

Board of Governors of the Federal Reserve System, February 10, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–2124 Filed 2–14–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary Licenses; Correction

In the **Federal Register** Notice published February 8, 2006 (71 FR 28) reference to the date issued to A.S.A.P. Transport Ltd. is corrected to read:

License No.	Name/address	Date issued
008790N	A.S.A.P. Transport Ltd., 2414 Morris Avenue, Union, NJ 07083	January 6, 2006.

Dated: February 10, 2006.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–2163 Filed 2–14–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank

holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 10, 2006.

A. Federal Reserve Bank of Cleveland (Cindy West, Manager) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Enterprise Financial Services Group, Inc., Allison Park, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Enterprise Bank, Allison Park, Pennsylvania; and Enterprise Employee Stock Ownership Trust, Allison Park, Pennsylvania to become a bank holding company by acquiring 22 percent of the voting shares of Enterprise Financial Services Group, Inc., Allison Park, Pennsylvania.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Texas Independent Bancshares, Inc., Texas City, Texas, and T.I.B. Delaware, Inc., Wilmington, Delaware; to merge with Southeast Bancorp of Texas, Inc., Winnie, Texas, and indirectly acquire SEBOT,Inc., and Gulf Coast Bank, Winnie, Texas.

Board of Governors of the Federal Reserve System, February 10, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–2123 Filed 2–14–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting; Notice

TIME AND DATE: 9 a.m. (e.d.t.); February 21, 2006.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the January 17, 2006, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of DOL audit reports for FY 2005:

Employee Benefits Security Administration Review of the Thrift Savings Plan Parallel Call Center at Spherix Incorporated, May 27, 2005 (updated with additional information received through August 17, 2005) and Executive Director's comments.

Employee Benefits Security Administration Review of the Thrift Savings Plan Withdrawals Process, dated August 24, 2005, and Executive Director's comments.

Employee Benefits Security Administration Post Implementation Review of the Thrift Savings Plan Mainframe Operations, dated October 7, 2005, and Executive Director's comments.

4. Investment policy.

Parts Closed to the Public

5. Internal personnel matters.
6. Procurement matters.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: February 13, 2006.

Thomas K. Emswiler,

Acting General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 06–1455 Filed 2–13–06; 1:07 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0937–0198; 30-day notice]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary; HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of Currently Approved Collection;

Title of Information Collection: Pubic Health Service Policies on Research Misconduct (42 CFR Part 93);

Form/OMB No.: OS–0937–0198;

Use: Section 493 of the Public Health Service Act and 42 CFR part 93 require each institution that applies for research and research-related grants to establish policies and procedures for investigation and reporting instances of alleged or apparent misconduct.

Frequency: Recordkeeping, reporting, annually;

Affected Public: Business or other for-profit, not-for-profit institutions; and individuals or households, Federal government, State, local or tribal government;

Annual Number of Respondents: 4,000;

Total Annual Responses: 3,800;

Average Burden Per Response: Six minutes;

Total Annual Hours: 400.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the Desk Officer at the address below: OMB Desk Officer: John Kraemer, OMB Human Resources and Housing Branch, Attention: (OMB #0937–0198),New Executive Office Building, Room 10235,Washington, DC 20503.

Dated: January 17, 2006.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E6–2121 Filed 2–14–06; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health; Changes to the Dose Reconstruction Target Organ Selection for Lymphoma Under the Energy Employees Occupational Illness Compensation Program Act of 2000

Authority: 42 CFR 82.32, 67 FR 22335–22336.

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Notice of a Change to a Scientific Element Underlying Radiation Dose Reconstructions under the Energy Employees Occupational Illness Compensation Program Act of 2000.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) has changed the selection of target organs used in dose reconstructions NIOSH produces under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) for energy employees with lymphoma cancers. This change responds to an evaluation by NIOSH of current scientific data on lymphoma, which revealed that the site of the radiation injury can differ from the site of the tumor or cancer origin documented in the medical files of a lymphoma cancer patient. The new process for selecting dose reconstruction target organs for energy employees with lymphoma cancers includes selecting the target organ that would have received the highest radiation dose from among relevant, possibly irradiated organs, as determined through the dose reconstruction process, when the identity of the target organ is in question. This change may result in the Department of Labor calculating higher probability of causation determinations for select lymphoma cases among previously decided and current EEOICPA cancer claims.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, Mailstop C–46, Cincinnati, OH 45226, Telephone: (513) 533–6800 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Summary of Public Comments

NIOSH accepted public comments on this proposed change to NIOSH dose reconstruction methods from January 19, 2006, through February 3, 2006. NIOSH received 15 comments from individuals.

Nine comments expressed support for the new lymphoma procedure, predicated on the condition that it improves chances of compensation being granted.

One comment objected to the different treatment of ''structural'' lymphomas (i.e., Hodgkin's disease, lymphosarcoma, reticulosarcoma, etc.) versus non-Hodgkin's and other lymphomas. A NIOSH scientist contacted the commenter and explained the technical basis for these distinctions, which in summary is that tumor location *is* informative of the site of radiation injury for such structural lymphomas. Upon this explanation, the commenter concurred with the procedure as proposed by NIOSH.

Five comments concerned individual claims for compensation rather than the new lymphoma procedure.

II. Summary of Recommendations of the ABRWH

The Advisory Board on Radiation and Worker Health (ABRWH) discussed the change and voted unanimously to support it during a teleconference meeting of the Board on January 9, 2006.

III. Summary of the Changes to the Dose Reconstruction Target Organ Selection for Lymphoma

NIOSH conducts radiation dose reconstructions under EEOICPA in compliance with the dose reconstruction methods specified in HHS regulations at 42 CFR part 82. These regulations provide for NIOSH to update its dose reconstruction methods as necessary on the basis of improved scientific understanding and specify a process for deciding and implementing such updates. 42 CFR 82.30–82.33. Accordingly, NIOSH has updated its method for reconstructing radiation doses in cases involving certain lymphoma cancers. Specifically, NIOSH has changed its method for identifying the target organ for which radiation doses will be reconstructed in these cases, for the reasons described below. As required for certain updates in dose reconstruction methods, NIOSH presented the proposed change to the ABRWH prior to implementation. NIOSH has also considered all public comments concerning this change that were received prior to the comment deadline, as specified above.

NIOSH has re-examined the appropriateness of the current method of selecting dosimetry target organs for lymphoma cases in light of the current scientific knowledge on the diagnosis and etiology of the various forms of lymphoma.[1] This re-examination has revealed that for many non-Hodgkin's lymphomas, there were two problems with NIOSH's previous target organ selection method. First, the site of occurrence of the tumor is not necessarily the site of the original radiation injury. Second, the site listed in the diagnosis may not actually be the site of primary involvement. Rather, it is common to list the site of the biopsy, which may be selected on the basis of medical considerations in terms of the clinical symptoms and condition of the patient and the ease of surgical access. Both of these problems contributed to the possibility that under the previous method for select lymphoma cases, NIOSH could not be certain its dose reconstruction was based on the biologically plausible organ with the highest radiation dose.

As a result of this re-evaluation, NIOSH has modified the selection of target organs in select lymphoma cases so that the organ that would have received the highest radiation dose from among relevant, possibly irradiated organs, as determined through the dose reconstruction process, is used in the dose reconstruction. For the subset of lymphomas where tumor location is informative about the probable site of original radiation injury (e.g. Hodgkin's disease, lymphosarcoma, etc.), the information related to the site of diagnosis will be considered in target organ selection.

This change pertains only to the selection of the appropriate target organ as the site of radiation injury (i.e., for calculation of effective radiation dose during the dose reconstruction process). It has no bearing on the selection of the appropriate Interactive Radiological Epidemiology Program (IREP) cancer risk model for determining probability

[1] Crowther, M. Consultant's Report, Dose Reconstruction Project. Prepared for the National Institute for Occupational Safety and Health Office of Compensation Analysis and Support. 2005; Eckerman, K.F. Target Organs for Lymphatic and Hematopoietic Cancers Comments/Suggestions. Prepared for the National Institute for Occupational Safety and Health Office of Compensation Analysis and Support. 2005. Available online at: *http://www.cdc.gov/niosh/ocas/ocasdose.html* (1. Evaluation of Target Organ for Lymphomas; note, this information can be found under the ''Miscellaneous Items'' section on this page).

of causation, nor does it impact the cancer risk models themselves.

This change in NIOSH dose reconstruction methods is likely to have a substantial effect on certain EEOICPA cancer cases involving lymphomas. NIOSH will review all relevant previously completed dose reconstructions for cases that have not been compensated to identify those for which this new method is applicable, and will re-complete these dose reconstructions using this new method. NIOSH will also apply this new method in dose reconstructions for all currently active lymphoma claims and any future cases. Application of this new method may result in the Department of Labor calculating higher probability of causation determinations for select lymphoma cases among previously decided and current EEOICPA cancer claims.

The Director, National Institute for Occupational Safety and Health (NIOSH), has been delegated the authority to sign **Federal Register** notices for CDC that pertain to NIOSH programmatic matters.

Dated: February 8, 2006.

John Howard,

Director, National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

[FR Doc. E6–2116 Filed 2–14–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and ControlSpecial Emphasis Panels (SEP): Developing Methodologies To Determine the Prevalence of Autism Spectrum Disorders in Early Childhood and Young Adult Populations, RFA DD–06–001

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Developing Methodologies to Determine the Prevalence of Autism Spectrum Disorders in Early Childhood and Young Adult Populations, RFA DD–06–001.

Time and Date: 8 a.m.–5 p.m., March 15, 2006 (Closed).

Place: Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Building 19, Room 254/255, Atlanta, GA 30333, Telephone Number 404–639–3138.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to: Developing Methodologies to Determine the Prevalence of Autism Spectrum Disorders in Early Childhood and Young Adult Populations, RFA DD–06–001.

For More Information Contact: M. Chris Langub, Ph.D., Scientific Review Administrator, Office of Public Health Research, CDC, 1600 Clifton Road, NE., Mailstop D–72, Atlanta, GA 30333, Telephone 404–639–4640.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 9, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–2138 Filed 2–14–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: National Child Abuse and Neglect Data System.

OMB No.: 6980–0229.

Description: The Administration on Children, Youth and Families established the National Child Abuse and Neglect Data System (NCANDS) to respond to the 1988 and 1992 amendments (Pub. L. 100–294 and Pub. L. 102–295) to the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 *et seq.*), as amended, which called for the creation of a coordinated national data collection and analysis program, both universal and case-specific in scope, to examine standardized data on false, unfounded, or unsubstantiated reports. In 1988, ACYF embarked on a collaborative effort with the States to develop a voluntary national data collection and analysis program to collect, compile, and make available State child abuse and neglect reporting information from Child Protective Services agencies in the 50 States, the District of Columbia, and the territories. The first request for annual data was in July 1991. Data collection has continued on an annual basis. The Children's Bureau is currently preparing the 15th annual report based on the NCANDS date.

In 1996, the Child Abuse Prevention and Treatment Act was ameanded by Public Law 104–235 to require that any State receiving the Basic State Grant work with the Secretary of the Department of Health and Human Services (HHS) to provide specific data on child maltreatment to the extent practicable. The legislation specified the following data elements:

(1) The number of children who were reported to the State during the year as abused or neglected.

(2) Of the number of children described in paragraph (1), the number with respect to whome such reports were—

(A) Substantiated;

(B) Unsubstantiated; or

(C) Determined to be false.

(3) Of the number of children described in paragraph (2)—

(A) The number who did not receive services during the year under the State program funded under this section or an equivalent State program;

(B) The number who received services during the year under the State program funded under this section or an equivalent State program; and

(C) The number who were removed from their families during the year by disposition of the case.

(4) The number of families who received preventive services from the State during the year.

(5) The number of deaths in the State during the year resulting from child abuse or neglect.

(6) Of the number of children described in paragraph (5), the number of such children who were in foster care.

(7) The number of Child Protective Services workers responsible for the intake and screening of reports filed in the previous year.

(8) The agency response time with respect to each such report with respect to initial investigation of reports of child abuse or neglect.

(9) The response time with respect to the provision of services to families and children where an allegation of abuse or neglect has been made.

(10) The number of Child Protective Services workers responsible for intake, assessment, and investigation of child abuse

and neglect reports relative to the number of reports investigated in the previous year.

(11) The number of children reunited with their families or receiving family preservation services that, within five years, result in subsequent substantiated reports of child abuse and neglect, including the death of the child.

(12) The number of children for whom individuals were appointed by the court to represent the best interests of such children and the average number of out-of-court contacts between such individuals and children.

States that receive the Basic State Grant meet this information requirement by submitting the NCANDS data.

The Children's Bureau proposes to continue collecting the NCANDS data through the two files of the Detailed Case Data Component, the Child File (the case-level component of NCANDS), and the Agency File (additional aggregate data that cannot be collected at a case level). It also proposes to continue to accept the Summary Data Component Survey from States that are unable to submit the Child File for another three data submission cycles (FFY 2005–FFY 2007). Technical assistance will continue to be provided to States so that all States can provide the Child File and Agency File for FFY 2005 data.

No changes are proposed for any of the data collection instruments.

The information collected by NCANDS will be used to understand better the experiences of children and families served by Child Protective Services and to guide policy and program development at the national and local levels. An annual report, entitled *Child Maltreatment,* will continue to be published. Data collected through the NCANDS will also be used to support the Department in responding to the requirements of the Government Performance and Results Act (GPRA) and the Program Assessment Rating Tool (PART), publishing State data in the report to Congress on child welfare outcomes, and monitoring States through the Child and Family Services Review process.

Respondents: State governments, the District of Columbia, and Puerto Rico.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Detailed Case Data Component (Child File and Agency File by 48 States starting with reporting for FFY 2006)	48	1	110	5,280
Summary Data Component Survey (by 4 States)	4	1	32	128
Estimated Total Annual Burden Hours:				5,408

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: February 9, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–1399 Filed 2–14–06; 8:45am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: April 2006 Current Population Survey Supplement on Child Support.

OMB No.: 0992–0003.

Description: Collection of these data will assist legislators and policymakers in determining how effective their policymaking efforts have been over time in applying the various child support legislation to the overall child support enforcement picture. This information will help policymakers determine to what extent individuals on welfare would be removed from the welfare rolls as a result of more stringent child support enforcement efforts.

Respondents: Individuals and Households.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Child Support Survey	41,300	1	.0241666	998

Estimated Total Annual Burden Hours 998.

Addition Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *Katherine_T._Astrich@omb.eop.gov.*

Dated: February 9, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–1400 Filed 2–14–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Refugee State-of-Origin Report.

OMB No.: 0970–0043.

Description: The information collection of the ORR–11 (Refugee State-of-Origin Report) is designed to satisfy the statutory requirements of the Immigration and Nationally Act. Section 412(a)(3) of the Act requires the Office of Refugee Resettlement (ORR) to compile and maintain data on the secondary migration of refugees within the United States, after arrival.

In order to meet this legislative requirement, ORR requires each State to submit an annual count of the number of refugees who were initially resettled in another State. The State does this by counting the number of refugees with Social Security numbers indicating residence in another State at the time of arrival in the United States. (The first three digits of the Social Security number indicates the State of residence of the applicant.)

Data submitted by the States are compiled and analyzed by the ORR statistician, who then prepares a summary report, which is included in ORR's Annual Report to Congress. The primary use of the data is to quantify and analyze refugee secondary migration among the 50 States. ORR uses these data to adjust its refugee arrival totals in order to calculate the ORR social services allocation.

Respondents: States.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR–11	50	1	4.333	217

Estimated Total Annual Burden Hours 217.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail: *infocollection@acf.hhs.gov.*

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: February 1, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–1401 Filed 2–14–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project

Title: Community-Based Abstinence Education Program (CBAE) Common Grant Guidance for Discretionary Grants.

OMB No.: 0970–0272.

Description: The discretionary funding Community-Based Abstinence Education Program (CBAE) is authorized by Title XI, Section 1110, of the Social Security Act (using the definitions contained in Title V, Section 510(b)(2) of the Act).

The CBAE Program Announcement requests basic application information that will be used to establish applicant eligibility, determine each applicant's capability, review and evaluate applicant proposals, and make grant awards.

Respondents: Faith-Based and Community Organizations (FBCOs), schools/school districts, universities/colleges, hospitals, public health agencies, local governments, Tribal Councils, small businesses/for-profit entities, housing authorities, etc.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Community-Based Abstinence Education Program Announcement	400	1	9	3,600

Estimated Total Annual Burden Hours 3,600.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: February 9, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–1402 Filed 2–14–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Voting Members on Public Advisory Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on the Allergenic Products Advisory Committee, Blood Products Advisory Committee, Cellular, Tissue and Gene Therapies Advisory Committee, Transmissible Spongiform Encephalopathies Advisory Committee, and the Vaccines and Related Biological Products Advisory Committee in the Center for Biologics Evaluation and Research (CBER). Nominations will be accepted for vacancies that will or may occur through December 31, 2006.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations of qualified candidates from these groups.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for the receipt of nominations. However, when possible, nominations should be received at least 6 months before the date of scheduled vacancies for each year, as indicated in this notice.

ADDRESSES: All nominations and curricula vitae should be sent to the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

FOR FURTHER INFORMATION CONTACT: Donald Jehn, Division of Scientific Advisors and Consultants, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0314, e-mail: *donald.jehn@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations of voting members with appropriate expertise for vacancies listed as follows:

TABLE 1.

Advisory Committee and Expertise Needed to Fill Vacancies	No. of Vacancies	Approximate Date Members are Needed
Allergenic Products Advisory Committee—allergy, immunology, pediatrics, internal medicine, biochemistry, statistics, and related scientific fields	1 1	As soon as possible August 31, 2006
Blood Products Advisory Committee—clinical and administrative medicine, hematology, immunology, blood banking, surgery, internal medicine, biochemistry, engineering, statistics, biological and physical sciences, biotechnology, computer technology, epidemiology, consumer advocacy, sociology/ethics, and other related professions	2 1	As soon as possible September 30, 2006

TABLE 1.—Continued

Advisory Committee and Expertise Needed to Fill Vacancies	No. of Vacancies	Approximate Date Members are Needed
Cellular, Tissue, and Gene Therapies Advisory Committee—cellular therapies, tissue transplantation, gene transfer therapies and xenotransplantation including biostatistics, bioethics, hematology/oncology, human tissues and transplantation, reproductive medicine, general medicine and various medical specialties including surgery and oncology, immunology, virology, molecular biology, cell biology, developmental biology, tumor biology, biochemistry, rDNA technology, nuclear medicine, gene therapy, infectious diseases, and cellular kinetics	2	March 31, 2006
Transmissible Spongiform Encephalopathies Advisory Committee—clinical and administrative medicine, hematology, virology, neurovirology, neurology, infectious diseases, immunology, transfusion medicine, surgery, internal medicine, biochemistry, biostatistics, epidemiology, biological and physical sciences, consumer advocacy, sociology/ethics, and other related professions	3	As soon as possible
Vaccines and Related Biological Products Advisory Committee—immunology, molecular biology, rDNA, virology, bacteriology, epidemiology, biostatistics, allergy, preventive medicine, infectious diseases, pediatrics, microbiology, biochemistry, and other related scientific fields	4	As soon as possible

I. Functions

A. Allergenic Products Advisory Committee

The committee reviews and evaluates available data concerning the safety, effectiveness, and adequacy of labeling of marketed and investigational allergenic biological products or materials that are administered to humans for the diagnosis, prevention, or treatment of allergies and allergic diseases.

B. Blood Products Advisory Committee

The committee reviews and evaluates available data concerning the safety, effectiveness, and appropriate use of blood and products derived from blood and serum or biotechnology which are intended for use in the diagnosis, prevention, or treatment of human diseases.

C. Cellular, Tissue and Gene Therapies Advisory Committee

The committee reviews and evaluates available data relating to the safety, effectiveness, and appropriate use of human cells, human tissues, gene transfer therapies and xenotransplantation products which are intended for transplantation, implantation, infusion, and transfer in the prevention and treatment of a broad spectrum of human diseases and in reconstruction, repair, or replacement of tissues for various conditions.

D. Transmissible Spongiform Encephalopathies Advisory Committee

The committee reviews and evaluates available scientific data concerning the safety of products which may be at risk for transmission of spongiform encephalopathies having an impact on the public health.

E. Vaccines and Related Biological Products Advisory Committee

The committee reviews and evaluates data concerning the safety, effectiveness, and appropriate use of vaccines and related biological products which are intended for use in the prevention, treatment, or diagnosis of human diseases.

II. Qualifications

Persons nominated for membership on the committees shall have adequately diversified experience appropriate to the work of the committee in such fields as clinical and administrative medicine, engineering, biological and physical sciences, statistics, and other related professions. The nature of specialized training and experience necessary to qualify the nominee as an expert suitable for appointment may include experience in medical practice, teaching, and/or research relevant to the field of activity of the committee. The particular need for vacancies on each committee for the calendar year 2006 is shown in Table 1 of this document. The term of office is up to 4 years, depending on the appointment date.

III. Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory committees. Self-nominations are also accepted. Nominations shall include the name of the committee, a complete curriculum vitae of each nominee, current business address and telephone number, and shall state that the nominee is aware of the nomination, is willing to serve as a member (name of committee(s) must be specified), and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: February 7, 2006.

Jason Brodsky,

Acting Associate Commissioner for External Relations.

[FR Doc. E6–2071 Filed 2–14–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006F–0058]

ARCH Chemicals, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that ARCH Chemicals, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of poly (iminoimidocarbonyliminoimidocarbonyliminohexamethylene) hydrochloride (CAS Reg. No. 32289–58–0) as an antimicrobial agent in the manufacture of food-contact paper and paperboard.

FOR FURTHER INFORMATION CONTACT: Elizabeth R. Sanchez, Center for Food Safety and Applied Nutrition (HFS 275), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1239.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 6B4764) has been filed by ARCH Chemicals, Inc., 1955 Lake Park Dr., suite 100, Smyrna, GA 30080. The petition proposes to amend the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* and § 176.180 *Components of paper and paperboard in contact with dry food* to provide for the safe use of poly (iminoimidocarbonyliminoimidocarbonyliminohexamethylene) hydrochloride (CAS Reg. No. 32289–58–0) as an antimicrobial agent in the manufacture of food-contact paper and paperboard.

The agency has determined under 21 CFR 25.32(q) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: January 25, 2006.

Laura M. Tarantino,

Director, Office of Food Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. E6–2137 Filed 2–14–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006F–0059]

Danisco USA, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Danisco USA, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polydextrose as a bulking agent, formulation aid, humectant and texturizer in all foods, except meat and poultry.

DATES: Submit written or electronic comments on the petitioner's environmental assessment by March 17, 2006.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Paul C. DeLeo, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1302.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 6A4763) has been filed by Danisco USA, Inc., 440 Saw Mill River Rd., Ardsley, NY 10502–2605. The petition proposes to amend the food additive regulations in § 172.841 *Polydextrose* (21 CFR 172.841) to provide for the safe use of polydextrose as a bulking agent, formulation aid, humectant, and texturizer in all foods, except meat and poultry. The proposed amendment would consolidate all existing food use categories and permit additional uses not allowed by the existing regulation.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations issued under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Division of Dockets Management (see **ADDRESSES**) for public review and comment. Interested persons may submit to the Division of Dockets Management written or electronic comments by March 17, 2006. Two copies of any written comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.51(b).

Dated: January 25, 2006.

Laura M. Tarantino,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. E6–2130 Filed 2–14–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0505]

Guidance for Industry and Food and Drug Administration; Class II Special Controls Guidance Document: Implantable Intra-Aneurysm Pressure Measurement System; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Class II Special Controls Guidance Document: Implantable Intra-Aneurysm Pressure Measurement System.'' This guidance document describes a means by which the implantable intra-aneurysm pressure measurement system may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to classify these device types into class II (special controls). This guidance document is immediately in effect as the special control for implantable intra-aneurysm pressure measurement

systems, but it remains subject to comment in accordance with the agency's good guidance practices (GGPs).

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies on a 3.5'' diskette of the guidance document entitled ''Class II Special Controls Guidance Document: Implantable Intra-Aneurysm Pressure Measurement System'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Nelson Anderson, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8282, ext. 171.

SUPPLEMENTARY INFORMATION:

I. Background

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying an implantable intra-aneurysm pressure measurement system into class II (special controls) under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(2)). This guidance document will serve as the special control for implantable intra-aneurysm pressure measurement systems.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act (21 U.S.C. 360(k)) for a device that has not previously been classified may, within 30 days after receiving an order classifying the device into class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device.

Within 30 days after issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification. On August 4, 2005, FDA classified the implantable intra-aneurysm measurement system into class III, because it was not substantially equivalent to a device that was introduced into interstate commerce for commercial distribution before May 28, 1976. On August 9, 2005, CardioMEMS, Inc., submitted a petition requesting classification of the CardioMEMS EndoSensor System under section 513(f)(2) of the act to be classified into class II. After review of the information submitted in the petition, FDA determined that the CardioMEMS EndoSensor System can be classified into class II with the establishment of special controls. FDA believes these special controls will provide reasonable assurance of the safety and effectiveness of the device. Therefore, FDA is issuing this guidance document as a level 1 guidance document that is immediately in effect. FDA will consider any comments that are received in response to this notice to determine whether to amend the guidance document.

II. Significance of Guidance

This guidance is being issued consistent with FDA's GGPs regulation (21 CFR 10.115). The guidance represents the agency's current thinking on implantable intra-aneurysm pressure measurement systems. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

To receive ''Class II Special Controls Guidance Document: Implantable Intra-Aneurysm Pressure Measurement System'' by fax machine, call the Center for Devices and Radiological Health (CDRH) Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1589) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The collections of information in this guidance document have been approved under OMB Control. No. 0910–0485.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 6, 2006.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. E6–2142 Filed 2–15–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0420]

Draft Guidance for Industry and Food and Drug Administration Staff; Medical Devices: Radiology Devices; Class II Special Controls Guidance Document: Bone Sonometers; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry and FDA staff entitled ''Class II Special Controls Guidance Document: Bone Sonometers.'' The draft guidance was developed to support the reclassification of bone sonometers from class III (premarket approval) into class II (special controls). Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule to reclassify these devices accordingly. This draft guidance is neither final nor is it in effect at this time.

DATES: Submit written or electronic comments on the draft guidance by May 16, 2006.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the draft guidance document entitled ''Class II Special Controls Guidance Document: Bone Sonometers'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ-220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this draft guidance to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Robert A. Phillips, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1212, ext. 130.

SUPPLEMENTARY INFORMATION:

I. Background

This draft guidance provides FDA's recommendations to manufacturers of bone sonometers for identifying risks to health and mitigation measures that can be taken to offset those risks. Bone sonometers are devices that transmit ultrasound energy into the human body to measure acoustic properties of bone that indicate overall bone health and fracture risk. These devices were classified into class III by statute (section 513(f)(1) of the Federal Food, Drug, and Cosmetic (the act) (21 U.S.C. 360e(f)(i))), however, FDA believes that sufficient information exists to establish special controls that, when followed and combined with the general controls of the act, would provide reasonable assurance of the safety and effectiveness of these devices.

II. Significance of the Guidance

This draft guidance is being issued consistent with FDA's good guidance practice regulation (21 CFR 10.115). The draft guidance, if finalized, would represent the agency's current thinking on bone sonometers. It would not create or confer any rights for or on any person and would not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Paperwork Reduction Act of 1995

This draft guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The collections of information addressed in the draft guidance have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB control number 0910–0120), which expires May 31, 2007. The labeling provisions addressed in the draft guidance have been approved by OMB under the PRA under OMB control number 0910–0485 and expires June 30, 2008.

IV. Comments

Interested persons may submit written or electronic comments on the draft guidance to the Division of Dockets Management (see **ADDRESSES**). Submit a single copy of electronic comments or two paper copies of any mailed comments, except that an individual may submit one paper copy. Identify comments with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

The Center for Devices and Radiological Health (CDRH) Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

To receive a copy of ''Class II Special Controls Guidance Document: Bone Sonometers,'' by fax, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1547) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so by using the Internet. CDRH maintains a site on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information.

Dated: January 17, 2006.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. E6–2078 Filed 2–14–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0001] (formerly 03D–0001)

Guidance for Industry on Nonclinical Safety Evaluation of Pediatric Drug Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Nonclinical Safety Evaluation of Pediatric Drug Products.'' This document provides guidance on the role and timing of animal studies in the nonclinical safety evaluation of therapeutics intended for the treatment of pediatric patients. The guidance discusses some conditions under which juvenile animals can be meaningful predictors of toxicity in pediatric patients and makes recommendations on nonclinical testing.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Karen L. Davis Bruno, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 3108, Silver Spring, MD 20993–0002, 301–796–2290.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Nonclinical Safety Evaluation of Pediatric Drug Products.'' Many therapeutics marketed in the United States and used in pediatric patients lack adequate information in the labeling for use in that population. Recent FDA regulations have focused attention on current practices for evaluating drug safety in this population. Traditionally, safety data from clinical studies in adults, supported by nonclinical studies in adult animals, have been used to support the use of a drug in pediatric patients. These studies may not always assess possible drug effects on developmental processes specific to pediatric age groups. Some effects may be very difficult to detect in clinical trials or during routine postmarketing surveillance.

In the **Federal Register** of February 3, 2003 (68 FR 5301), FDA announced the availability of a draft version of this guidance entitled ''Nonclinical Safety Evaluation of Pediatric Drug Products.'' Interested persons had the opportunity to submit comments. Based on the public comments received, changes to wording have been added for clarity and the guidance has been finalized. This document provides guidance on the role and timing of animal studies in the safety evaluation of therapeutics intended for the treatment of pediatric patients. It is intended to serve as a resource for general considerations in testing and provide specific recommendations based on available science and pragmatic considerations. The scope of this guidance is limited to safety effects that cannot be reasonably, ethically, and safely assessed in pediatric clinical trials.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on nonclinical safety evaluation of pediatric drug products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: February 8, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–2139 Filed 2–14–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Assessment of the Engagement of Historically Black Colleges and Universities in Campus and Community-based Activities To Eliminate Health Disparities (NEW)

The Health Resources and Services Administration (HRSA) plans to conduct a survey of 525 university administrators at Historically Black Colleges and Universities (HBCUs) to collect information not otherwise available about the extent to which HBCUs have engaged in health promoting activities on campus and in their surrounding communities that are designed to eliminate health disparities among African Americans. The results of this survey will be used by HRSA's Office of Minority Health and Health Disparities (OMHHD) to obtain information regarding the engagement of HBCUs in health disparities activities. The results of the survey will also permit OMHHD (1) to describe the origins, structure, content, and intensity of such activities, (2) to document the level of support for campus and community activities among administrative leaders at HBCUs, (3) to document the factors that facilitate or hinder the ability of HBCUs to engage in campus and community activities to eliminate health disparities, and (4) to determine whether there is a need among HBCUs for additional assistance that will allow them to expand their role and improve their effectiveness in addressing health disparities.

The survey process will include a web-based survey to be completed by targeted respondents. Follow-up

telephone calls will be conducted with respondents who do not complete the online survey. Approximately 5 administrators will be surveyed at each of the 105 recognized HBCUs. The types of administrators to be surveyed include Presidents, Deans of Faculty, Deans of Students, and staff and/or faculty that are leaders for programs that are associated with eliminating health disparities. The estimated burden of data collection is as follows:

The burden estimate for this project is as follows:

Form	Number of respondents	Average number of responses per respondent	Total responses	Hours per response	Total burden hours
Survey	525	1	525	0.50	262.5

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 10–33 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Written comments should be received within 60 days of this notice.

Dated: February 9, 2006.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. E6–2069 Filed 2–14–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Application for the National Health Service Corps (NHSC) Scholarship Program (OMB No. 0915–0146): Extension

The National Health Service Corps (NHSC) Scholarship Program's mission is to ensure the geographic representation of physicians and other health practitioners in the United States. Under this program, health professions students are offered scholarships in return for service in a federally designated Health Professional Shortage Area (HPSA). The Scholarship Program provides the NHSC with the health professionals it requires to carry out its mission of providing primary health care to HPSA populations in areas of greatest need. Students are supported who are well qualified to participate in the NHSC Scholarship Program and who want to assist the NHSC in its mission, both during and after their period of obligated service. Scholars are selected for these competitive awards based on the information provided in the application and during the semi-structured personal interview that is conducted by a team of two interviewers who use a structured scoring procedure. Awards are made to applicants who demonstrate a high potential for providing quality primary health care services.

The estimated response burden is as follows:

Form	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Application	1800	1	1	1800
Interview	900	1	1	900
Total	2700			2700

Written comments and recommendations concerning the proposed information collection should be sent within 60 days of this notice to: Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 10857.

Dated: February 9, 2006.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. E6–2072 Filed 2–14–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; SBIR Topic 226 ''A Clinical Decision Support Tool To Promote Evidence-Based Screening and Intervention in Tobacco Users''.

Date: March 21, 2006.

Time: 10:45 a.m. to 1 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Conference Room 611, Rockville, MD 20852. (Telephone Conference Call.)

Contact Person: Gail J. Bryant, Medical Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, National Institute of Health, 6116 Executive Boulevard, Room 8111, MSC 8328, Bethesda, MD 20852–8328. (301) 402–0801. *gb30t@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 7, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1379 Filed 2–14–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; SBIR Topics 196, 197, 205, 227, 228.

Date: March 13–14, 2006.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Kenneth L. Bielat, PhD, Scientific Review Administrator, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 7147, Bethesda, MD 20892. (301) 496–7576. *bielatk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 7, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1380 Filed 2–14–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Applied Emerging Technologies for Cancer Research.

Date: March 16–17, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Kenneth L. Bielat, PhD, Scientific Review Administrator, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 7147, Bethesda, MD 20892. (301) 496–7576. *bielatk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 8, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1381 Filed 2–14–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; CA 06–501, ''Academic Public Private Partnership Program (AP4)''.

Date: February 23, 2006.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Lalita D. Palekar, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116

Executive Boulevard, Room 8105, Bethesda, MD 20892–7405. (301) 496–7575.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 8, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1382 Filed 2–14–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, SBIR Topic 225, ''Home Centered Coordinated Cancer Care System.''

Date: March 17, 2006.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Gail J. Bryant, Medical Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8111, MSC 8328, Bethesda, MD 20852–8328. (301) 402–0801. *gb30t@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 8, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1383 Filed 2–14–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, PAR 04–020 ''Small Grants for Behavioral Research in Cancer Control''.

Date: March 16–17, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Joyce C. Pegues, PhD., Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd. 7149, Bethesda, MD 20892, 301/594–1286, *peguesj@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 8, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1386 Filed 2–14–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: April 27, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: George Washington University Inn, 824 New Hampshire Ave., NW., Washington, DC 20037.

Contact Person: Jerry Roberts, PhD, Scientific Review Administrator, Scientific Review Branch, National Institutes of Health, Building 38A, Bethesda, MD 20892, (301) 402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: February 8, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1385 Filed 2–14–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Gastrointestinal Inflammation.

Date: March 8, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Washington Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Xiaodu Guo, MD, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 705, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–4719. *guox@extra.middk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Training Grant in Digestive Diseases.

Date: March 14, 2006.

Time: 4:30 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–7637. *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research; National Institutes of Health, HHS)

Dated: February 7, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1377 Filed 2–14–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: March 6, 2006.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, 3043, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol, Abuse and Alcoholism, Bethesda, MD 20892–9304, (301) 443–2926, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: February 8, 2006.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1384 Filed 2–14–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, NIH Small Research Grants.

Date: March 7, 2006.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Michele C. Hindi-Alexander, PhD, Division of Scientific Review, National Institutes of Health, National Institute for Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20812–7510, (301) 435–8382, *hindialm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 8, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1387 Filed 2–14–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: March 8, 2006.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, 3045, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol, Abuse and Alcoholism, Bethesda, MD 20892–9304, (301) 443–2926, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: February 8, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1388 Filed 2–14–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Initial Review Group.

Date: March 2–3, 2006.

Time: 8:15 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Hotel—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Jeffrey M. Chernak, PhD, Scientific Review Administrator, Office of Review, National Institute of Nursing Research, 6701 Democracy Plaza, Suite 710, MSC 4870, Bethesda, MD 20892, (301) 402–6959, *Chernak@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: February 8, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1389 Filed 2–14–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Simulations for Drug Related Science Education.

Date: March 1, 2006.

Time: 10:30 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1439, *lf33c.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: February 8, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1390 Filed 2–14–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse, Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Member Conflict Meeting.

Date: March 7, 2006.

Time: 4:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Murat Oz, PhD, Health Scientist Administrator, Office of Extrumural Affairs, National Institute on Drug Abuse, NIH, DHHS, Neuroscience Center, Rm. 229, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892, 301–435–1433, *moz2@mail.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Member Conflict Meeting.

Date: March 7, 2006.

Time: 5:30 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Murat Oz, PhD., Health Scientist Administrator, Office of Extrumural Affairs, National Institute on Drug Abuse, NIH, DHHS, Neuroscience Center, Rm. 229, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892, 301–435–1433, *moz2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: February 8, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1391 Filed 2–14–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Translational Research for the Prevention and Control of Diabetes.

Date: March 14, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Michele L. Barnard, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–8898. *barnardm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, LRP Review.

Date: March 20, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: D.G. Patel, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–7682. *pateldg@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, The Look Ahead Clinical Trial.

Date: March 27, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: D.G. Patel, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–7682. *pateldg@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 8, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1393 Filed 2–14–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Research Project (R01s).

Date: March 14–15, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Radisson Governor's Inn, I–40 at Davis Drive, Exit 280, Research Triangle Park, NC 27709.

Contact Person: Janice B Allen, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, P.O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709. 919–541–7556.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: February 8, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1394 Filed 2–14–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel, ZEB1 OSR C M1 S.

Date: March 28, 2006.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Prabha L. Atreya, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of Biomedical Imaging and Bioengineering, Bethesda, MD 20892. (301) 496–8633. *atreyapr@mail.nih.gov.*

Dated: February 8, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1395 Filed 2–14–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Hyperaccelerated Award/Mechanisms in Immunomodulation Trials (March 2006)—ZAI1–MP–I–M4.

Date: March 7, 2006.

Time: 12:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Room 3256, Bethesda, MD 20817. (Telephone Conference Call).

Contact Person: Mercy R. PrabhuDas, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616. 301–451–2615. *mp457n@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 8, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1396 Filed 2–14–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (U.S.C. Appendix 2,) notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(b)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Centers for Scientific Review Special Emphasis Panel; Anterior Eye.

Date: February 21, 2006.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Christine A. Livingston, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7846, Bethesda, MD 20892. (301) 435–1172. *livingsc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Dry Eye and Glucoma.

Date: February 21, 2006.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Christine A. Livingston, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7846, Bethesda, MD 20892. (301) 435–1172. *livingsc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Word Acquisition and Learning.

Date: February 23, 2006.

Time: 3:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Biao Tian, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892. (301) 402–4411. *tianbi@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Research on Ethical Issues in Human Studies.

Date: February 24, 2006.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Chevy Chase Pavillion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Karin F. Helmers, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892. (301) 435–1017. *helmersk@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biology of Vectors.

Date: March 1, 2006.

Time: 2:15 p.m. to 4:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Rossana Berti, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3015–G, MSC 7846, Bethesda, MD 20892. (301) 402–6411. *bertiros@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; HOP SBIR Applications.

Date: March 2–3, 2006.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Karin F. Helmers, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892. (301) 435–1017. *helmersk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RIBT Member Conflicts.

Date: March 2, 2006.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: George M. Barnas, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892. (301) 435–0696. *barnasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Development of Methods for In Vivo Imaging and Bioengineering Research.

Date: March 6–7, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Behrouz Shabestari, PhD., Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7854, Bethesda, MD 20892. (301) 435–2409. *shabestb@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Clinical Neuroscience and Disease Study Section.

Date: March 6–7, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Rene Etcheberrigaray, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892. (301) 435–1246. *etcheber@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Vector Biology.

Date: March 6–7, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Rouge, 1316 16th Street, Washington, DC 20036.

Contact Person: John C. Pugh, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1206, MSC 7808, Bethesda, MD 20892. (301) 435–2398. *pughjohn@csr.nih.gov*

Name of Committee: Cardiovascular Sciences Integrated Review Group; Clinical and Integrative Cardiovascular Sciences Study Section.

Date: March 6–7, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Clarion Hotel Bethesda Park, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Russell T. Dowell, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7814, Bethesda, MD 20892. (301) 435–1850. *dowellr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Conflicts in Biological Chemistry and Macromolecular Biophysics.

Date: March 6, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Donald L. Schneider, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892. (301) 435–1727. *schneidd@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group; Vascular Cell and Molecular Biology Study Section.

Date: March 6–7, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Anshumali Chaudhari, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892. (301) 435–1210. *chaudhaa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business Cardiovascular Devices.

Date: March 6–7, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Roberto J. Matus, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892. 301–435–2204. *matusr@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS-associated Opportunistic Infections and Cancer Study Section.

Date: March 6–7, 2006.

Time: 8 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Eduardo A. Montalvo, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892. (301) 435–1168. *montalve@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer Drug Development and Therapeutics SBIR.

Date: March 6–7, 2006.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Eva Petrakova, PhD., MPh, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892. (301) 435–1716. *petrakoe@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer Diagnostic and Treatment, SBIR/STTR.

Date: March 6–7, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Hungyi Shau, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892. (301) 435–1720. *shauhung@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cell Biology SBBR/STTR Applications.

Date: March 6, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Marcia Steinberg, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5130, MSC 7840, Bethesda, MD 20892. (301) 435–1023. *steinbem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Drug Discovery and Development.

Date: March 6–7, 2006.

Time: 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle, One Washington Circle, NW., Washington, DC 20037.

Contact Person: Sergei Ruvinov, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892. (301) 435–1180. *ruvinser@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; AIDS Small Business Innovative Research.

Date: March 6, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, Washington, DC 20037.

Contact Person: Kenneth A. Roebuck, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892. (301) 435–1166. *roebuckk@csr.nih.gov.*

Name of Committee: Center for Scientific Special Emphasis Panel, Small Business: Electromagnetics.

Date: March 6, 2006.

Time: 4 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Lee Rosen, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892. (301) 435–1171. *rosenl@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Microscopic Imaging Study Section.

Date: March 7–8, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, Washington, DC 20037.

Contact Person: Ross D. Shonat, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3022A, MSC 7849, Bethesda, MD 20892. (301) 435–2786. *shonatr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Bioengineering.

Date: March 7, 2006.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Rass M. Shayiq, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892. (301) 435–2359. *shayiqr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer Models and Markers.

Date: March 7, 2006.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Joanna M. Watson, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046–G, MSC 7804, Bethesda, MD 20892. (301) 435–1048. *watsonjo@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Musculoskeletal Rehabilitation Sciences Study Section.

Date: March 8–10, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892. (301) 435–1786. *pelhamj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; HAI Overflow Study Section.

Date: March 8, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: George Washington University Inn, 824 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Jin Huang, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095G, MSC 7812, Bethesda, MD 20892. (301) 435–1187. *jh377p@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Non-Mammalian Membrane Studies.

Date: March 8, 2006.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institues of Health, 6701 Rocklege Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Raya Mandler, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892. (301) 402–8228. *rayam@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 903.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 7, 2006.

Anna Snouffer,

Acting Director, Officer of Federal Advisory Committee Policy.

[FR Doc. 06–1378 Filed 2–14–06; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review: Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Endocrinology, Metabolism, Nutrition and Reproductive Sciences Fellowship Panel.

Date: March 2, 2006

Time: 7 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: R. Paxton, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046C, MSC 7892, Bethesda, MD 20892. (301) 435–1049. *paxtonr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurogenetics and Neurogenomics.

Date: March 3, 2006.

Time: 8 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Robert C. Elliott, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892. (301) 435–3009. *elliotro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuropharmacology Small Business.

Date: March 6–7, 2006

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jerome Wujek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892. (301) 435–2507. *wujekjer@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Neuroscience and Disease.

Date: March 6–7, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Rene Etcheberrigaray, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892. (301) 435–1246.*etcheber@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Risk, Prevention and Intervention for Addictions.

Date: March 6–7, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hotel Helix, 1430 Rhode Island Avenue, NW., Washington, DC 20005.

Contact Person: Gayle M. Boyd PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3028–D, MSC 7759, Bethesda, MD 20892. 301–451–9956. *gboyd@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering Research Partnership.

Date: March 6, 2006.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Lawrence E. Boerboom, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7814, Bethesda, MD 20892. (301) 435–8367. *boerboom@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Quick-Trials for Imaging and Image-Guided Intervention.

Date: March 6, 2006.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Xiang-Ning Li, PhD., MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892. 301–435–1744. *lixiang@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, R01 Grant Application.

Date: March 6, 2006.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, (Telephone Conference Call).

Contact Person: Michael M. Sveda, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892. 301–435–3565. *svedam@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Childhood Health and Injury.

Date: March 6, 2006.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Michael Micklin, PhD, Chief, RPHB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892. (301) 435–1258. *micklinm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Neuroscience and Disease.

Date: March 6–7, 2006.

Time: 12 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Seetha Bhagavan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3022D, MSC 7846, Bethesda, MD 20892. (301) 435–1121. *bhagavas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurotechnology and Neuroengineering.

Date: March 7, 2006.

Time: 8 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.

Contact Person: Robert C. Elliott, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892. (301) 435–3009. *elliotro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, RIBT Member Conflicts.

Date: March 7, 2006.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: George M. Barnas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892. (301) 435–0696. *barnasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Longitudinal Studies of Substance Use Risk and Relapse.

Date: March 7, 2006.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hotel Helix, 1430 Rhode Island Avenue, NW., Washington, DC 20005.

Contact Person: Gayle M. Boyd, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3028–D, MSC 7759, Bethesda, MD 20892. (301) 451–9956. *gboyd@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Topics in Bacterial Pathogenesis.

Date: March 9–10, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Rolf Menzel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, MSC 7808, Bethesda, MD 20892. 301–435–0952. *menzelro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bacterial Detection, Food Safety and Microbial Sterilization.

Date: March 9–10, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Washington National Airport, 1489 Jefferson Davis Hwy, Arlington, VA 22202.

Contact Person: Fouad A. El-Zaatari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7808, Bethesda, MD 20814–9692. (301) 435–1149. *elzaataf@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS Immunology and Pathogenesis Study Section.

Date: March 9–10,2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: River Inn Hotel, 924 Twenty Fifth Street, NW., Washington, DC 20037.

Contact Person: Abraham P. Bautista, MSC, PhD, Scientist Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892. (301) 435–1506. *bautista@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, BDCN Fellowship Special Emphasis Panel.

Date: March 9–10,2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Suzan Nadi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892. (301) 435–1259. *nadis@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Injury and Neurovascular Pathologies: Quorum.

Date: March 9–10, 2006.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Jury's Hotel in Dupont Circle, 1500 New Hampshire Ave., NW., Washington, DC 20036.

Contact Person: Seetha Bhagavan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health,6701 Rockledge Drive, Room 3022D, MSC 7846, Bethesda, MD 20892. (301) 435–1121. *bhagavas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, SBIR/STTR Risk Prevention and Health Behaviors.

Date: March 9–10, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Helix, 1430 Rhode Island Avenue NW., Washington, DC 20005.

Contact Person: Claire E. Gutkin, PhD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7759, Bethesda, MD 20892. 301–594–3139. *gutkincl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chemical and Bioanalytical Sciences.

Date: March 9–10, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: David R. Jolie, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4156, MSC 7806, Bethesda, MD 20892. (301) 435–1722 *jollieda@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Development Disabilities, Communication, and Science Education.

Date: March 9–10, 2006.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Thomas A. Tatham, PhD., Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892 (301) 594–6836. *tathamt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Community Influences on Health Behavior.

Date: March 9, 2006.

Time: 10:30 a.m. to 11:45 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Valerie Durrant, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892 (301) 435–3554. *durrantv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Community Level Health Prevention.

Date: March 9, 2006.

Time: 11:45 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Valerie Durrant, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892 (301) 435–3554. *durrantv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Members Conflict: Immunological Synapse Special Emphasis Panel.

Date: March 9, 2006.

Time: 1 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Patrick K. Lai, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2215, MSC 7812, Bethesda, MD 20892. 301–435–1052. *laip@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Myosin Assembly.

Date: March 9, 2006.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Charles R. Dearolf, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892. 301–435–1024. *dearolfc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: LFA and Immunological Snapse Special Emphasis Panel.

Date: March 9, 2006.

Time: 2 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Patrick K. Lai, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2215, MSC 7812, Bethesda, MD 20892. 301–435–1052. *laip@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Endocrinology, Metabolism, Nutrition and Reproductive Sciences.

Date: March 9–10, 2006.

Time: 7 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Grand Hyatt Washington, 1000 H Street, NW., Washington, DC 20001.

Contact Person: Krish Krishnan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892. (301) 435–1041. *krishnak@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Technology Development.

Date: March 9–10, 2006.

Time: 7:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7849, Bethesda, MD 20892. 301–435–1159. *ameros@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Hypertension and Microcirculation Study Section.

Date: March 9–10, 2006.

Time: 8 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Ai-Ping Zou, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892. 301–435–1777. *zouai@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business, Digestive Sciences.

Date: March 10, 2006.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Mushtaq A. Khan, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892. (301) 301–435–1778. *khanm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Drugs and Reinforcement.

Date: March 10, 2006.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Christine L. Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892. 301–435–1713. *melchioc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Oxidized LDL Activation in Blood Platelet Function and The cGMP-dependent Protein Kinase Pathway in Platelets.

Date: March 10, 2006.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, (301) 435–1195. *sur@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering, Technology, and Surgical Sciences Member Conflict.

Date: March 10, 2006.

Time: 2:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Roberto J. Matus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892. 301–435–2204. *matusr@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93,337, 93.393–93.396, 93.837–98.844, 93.846–93.878, 93.892, 93.893, Naitonal Institutes of Health, HHS)

Dated: February 8, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1392 Filed 2–14–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–2005–0042]

RIN 1660–ZA11

Privacy Act of 1974; National Flood Insurance Program (NFIP); Letter of Map Amendment (LOMA) System of Records

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice of Privacy Act system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, the Department of Homeland Security gives notice that its Federal Emergency Management Agency proposes to establish a System of Records, entitled the Letter of Map Amendment system, DHS/FEMA/NFIP/LOMA–1. This system of records will contain individually identifying information voluntarily provided by applicants for Letters of Map Amendments to exclude properties from special flood hazard area maps when appropriate.

DATES: The proposed System of Records will be effective March 17, 2006, unless comments are received that result in a contrary determination. The public is invited to comment on the proposed System of Records.

ADDRESSES: You may submit comments, identified by FEMA–2005–0042 by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *FEMA-RULES@dhs.gov*. Include FEMA–2005–0042 in the subject line of the message.
- Fax: 202–646–4536. (Not a toll-free number).
- Mail: Please address them to the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Room 406, 500 C Street, SW., Washington, DC 20472; Maureen Cooney, Acting Chief Privacy Officer, 601 S. 12th Street, Arlington, VA 22202.
- Hand Delivery/Courier: Please address them to the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Room 406, 500 C Street, SW., Washington, DC 20472; Maureen Cooney, Acting Chief Privacy Officer, 601 S. 12th Street, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Rena Y. Kim, Privacy Act Officer, Room 406, 500 C Street, SW., Washington, DC 20472; (telephone) (202) 646–3949; Maureen Cooney, Acting Chief Privacy Officer, Department of Homeland Security, 601 S. 12th Street, Arlington, VA 22202–4202 by telephone (571) 227–3813 or facsimile (571) 227–4171.

SUPPLEMENTARY INFORMATION: The Privacy Act (5 U.S.C. 552a) embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses and disseminates personally identifiable information. The Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Letter of Map Amendment (LOMA) system established by this Notice is such a system of records.

The Privacy Act requires each agency to publish in the **Federal Register** a description of the type and character of each system of records that the agency maintains, and the routine uses for which such information may be disseminated and the purpose for which the system is maintained.

The Letter of Map Amendment system will be used to support FEMA's administration of the National Flood Insurance Program (NFIP). The National Flood Insurance Act of 1968, Public Law 90–448, as amended by the Flood Disaster Protection Act of 1973, Public Law 93–234, established the NFIP to provide flood insurance in communities that voluntarily adopt and enforce floodplain management ordinances that meet minimum NFIP requirements. As part of the NFIP, FEMA assists communities by producing flood maps that indicate, among other things, which properties are located in special flood hazard areas (SFHA).

Limitations of scale or topographic definition of the source maps used to prepare the Flood Insurance Rate Map (FIRM) may cause small areas that are at or above the one percent annual chance flood elevation to be inadvertently shown within the SFHA boundaries. In SFHAs, flood insurance is required on properties with federally-backed loans. A property outside of an SFHA is not required by FEMA to carry flood insurance, and often lenders do not require individuals who are financing or refinancing properties located outside of SFHAs to buy flood insurance policies. For this reason, individuals seek LOMAs to request that FEMA reverse the determination that their property is situated in an SFHA.

FEMA offers administrative procedures to review SFHA designations and, with appropriate engineering documentation, to exclude property from inadvertent inclusion in an SFHA. FEMA accomplishes this through a LOMA, in which FEMA officially states its position whether property is located outside of a special flood hazard area. FEMA's regulations for issuing LOMAs can be found in 44 CFR Part 70.

The new LOMA system of records will contain personally identifying information voluntarily provided by applicants (individuals and/or certifiers as described below) applying for LOMAs.

- An individual is any person financing or refinancing structures or parcels of land (hereinafter referred to as ''property'' or ''properties'') with a federally-backed loan. Examples of individuals are home owners, investors, and property developers.
- A certifier is a Registered Professional Engineer or Licensed Land Surveyor who provides technical information, such as elevation, to FEMA. Certifiers have the professional credentials to analyze engineering information. The certifier may provide information either electronically or in hard copy on behalf of the individual.

The information collected includes the individual's name, mailing address, signature, and signature date. The individual can voluntarily provide daytime telephone number, e-mail address, and fax number—which are not required—but which enables FEMA to contact the individual should questions arise. In addition, the certifier is required to provide name, professional license number and expiration date, company name, property address or legal description, e-mail address, and business telephone number. The certifier can voluntarily provide a fax number that enables FEMA to fax documents related to the LOMA.

The information will be collected in hard copy format and maintained at FEMA's repository located at 847 South Pickett Street, Alexandria, VA 22034, or electronically through the proposed mapping information platform (MIP). The collected information will be maintained either as paper records or computerized files retrieved by an individual's property address or legal description and/or case number.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this new system of records to the Office of Management and Budget (OMB) and to Congress.

SYSTEM NAME:

Letter of Map Amendment System (LOMA), DHS/FEMA/NFIP/LOMA–1.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Electronic: Solutions Delivery Center (SDC), 3039 Cornwallis Road, Building 301, Dock 85/86, Research Triangle Park, North Carolina 27709. Paper: FEMA's Map Modernization Library, 847 South Pickett Street, Alexandria VA 22034.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system covers only applicants (individuals and/or certifiers) who are seeking a letter of map amendment (LOMA).

CATEGORIES OF RECORDS IN THE SYSTEM:

There are three ways to apply for a LOMA. They include the paper only MT–1 form, online MT–EZ, and electronic LOMA (eLOMA). The associated categories of records include:

- Individual's name
- Individual's mailing address
- Individual's signature
- Individual's signature date
- Certifier's (registered professional engineer or licensed land surveyor) name
- Certifier's professional license number
- Certifier's professional license expiration date
- Certifier's company name
- Individual's property address
- Individual's legal property description
- Certifier's business telephone number

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Flood Insurance Act of 1968, Public Law 90–448, as amended by the Flood Disaster Protection Act of 1973, Public Law 93–234.

PURPOSE:

This system is maintained for the purpose of determining an applicant's eligibility for LOMAs. An applicant can be a private individual or a certified professional.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To an agency, organization, or individual for the purposes of performing authorized audit or oversight operations.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal government, when necessary to accomplish an agency function related to this.

D. Where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil or regulatory—the relevant records may be referred to an appropriate Federal, State, territorial, tribal, local, international, or foreign agency law enforcement authority or other appropriate agency charged with investigating or prosecuting such a violation or enforcing or implementing such law.

E. To the Department of Justice (DOJ) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when: (a) DHS, or (b) any employee of DHS in his/her official capacity, or (c) any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee, or (d) the United States or any agency thereof, is a party to the litigation or has an interest in such litigation.

F. To the National Archives and Records Administration (NARA) or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. Sections 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Privacy Act information may be reported to consumer reporting agencies pursuant to 5 U.S.C. 552a(b)(12).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Official records in this system are stored on paper at the FEMA Map Modernization Library, located at 847 South Pickett Street, Alexandria VA 22034. Electronic records will be stored at the FEMA's limited access facility—Service Delivery Center, located at 3039 East Cornwallis Road, Raleigh NC 27709. Computerized records are stored in a database server in a secured file server room. Personally identifying information is appropriately stored in accordance with the DHS Information Technology Security Program Handbook.

RETRIEVABILITY:

Records are retrieved by the individual's property address or, if there is no address, by the legal description of the property. Records are also retrieved by the individual's uniquely identifying case number.

SAFEGUARDS:

Safeguards include restricting access to authorized personnel who have a need to know, using locks, and password protection identification features. File areas are locked after normal duty hours, and the facilities are protected by security personnel or technology such as security cameras.

Use of the database and physical records will be carefully monitored by the system administrators and the library administrators at:

- Paper: FEMA Map Modernization Library, 847 South Pickett Street, Alexandria VA 22034
- Electronic: Service Delivery Center, 3039 East Cornwallis Road, Raleigh NC 27709

The system has an audit trail of changes made to the application and the user identification of who made the changes. Electronic records are also safeguarded by software programs that monitor traffic to identify unauthorized attempts to upload or change information or otherwise cause damage. Unauthorized attempts to upload or change information are prohibited and may be punishable under the Computer Fraud and Abuse Act of 1986 and the National Information Infrastructure Protection Act.

RETENTION AND DISPOSAL:

The retention schedule has been approved by NARA. The NARA authority is N1–311–86–1 2A2c; the retention period is 20-years. Electronic copies of MT–EZs and eLOMAs will be printed and retained in the same manner as hard copies.

SYSTEM MANAGER(S) AND ADDRESS:

Paper: FEMA Map Modernization Library, 847 South Pickett Street, Alexandria VA 22034. Electronic: Service Delivery Center, 3039 East Cornwallis Road, Raleigh NC 27709.

NOTIFICATION PROCEDURE:

A request for access to records in this system may be made by writing to the System Manager, identified above, or to

the Privacy Act Officer, in conformance with 6 CFR part 5, subpart B and 44 CFR part 6, which provides the rules for requesting access to Privacy Act records.

RECORD ACCESS PROCEDURE:

The procedures for individuals to gain access to their own information are listed both in FEMA's and the DHS's Privacy Act regulations, 44 CFR part 6 and 6 CFR part 5, subpart B. Requests for Privacy Act protected information must be made in writing, and clearly marked as a ''Privacy Act Request.'' The name of the requester, the nature of the record sought, and the required verification of identity must be clearly indicated. Requests should be sent to: Privacy Act Officer, DHS/FEMA, Office of General Counsel, Room 406, 500 C Street, SW., Washington DC 20472.

CONTESTING RECORD PROCEDURES:

Same as Record Access Procedure (above). State clearly and concisely the information being contested, the reasons for contesting it, and the proposed change to the record.

RECORD SOURCE CATEGORIES:

The information will come from individuals and certifiers.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

Dated: February 9, 2006.

Maureen Cooney,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E6–2122 Filed 2–14–06; 8:45 am]

BILLING CODE 4410✖P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5031–C–02]

Section 8 Housing Assistance Payments Program—Contract Rent Annual Adjustment Factors, Fiscal Year 2006: Correction

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice of revised contract rent Annual Adjustment Factors, correction.

SUMMARY: This notice makes corrections to the revised Annual Adjustment Factors (AAFs) published in the **Federal Register** on December 1, 2005 (70 FR 72168), for two areas: the Midwest region and the South region. The numbers for these two areas were reversed. The correct numbers were used in calculating Fair Market Rents (FMRs) and in other publications that used FMRs or AAFs.

DATES: *Effective Date:* December 1, 2005.

FOR FURTHER INFORMATION CONTACT: David Vargas, Senior Advisor, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, (202) 708–0477 can respond to questions relating to the Section 8 Voucher, Certificate, and Moderate Rehabilitation programs; Mark Johnston, Office of Special Needs Assistance Programs, Office of Community Planning and Development, (202) 708–1234, for questions regarding the Single Room Occupancy Moderate Rehabilitation program; Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, (202) 708–3000, for questions relating to all other Section 8 programs. Marie L. Lihn, Economic and Market Analysis Division, Office of Policy Development and Research (202) 708–0590, is the contact for technical information regarding the development of the factors for specific areas or the methods used for calculating the AAFs. Mailing address for above persons: Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Hearing- or speech-impaired persons may contact the Federal Information Relay Service at 1–800–877–8339 (TTY). (Other than the ''800'' TTY number, the above-listed telephone numbers are not toll-free.)

Correction

Accordingly, in FR Doc 02–5031, a document published on December 1, 2005 (70 FR 72168), is corrected as follows:

1. On page 72170, Schedule C, Table 1, the entries for Midwest region and South region are corrected to read as follows:

2006 Contract Rents, Table 1	Highest Cost Utility	
	Included	Excluded
Midwest Region	1.022	1.013
South Region	1.029	1.024

1. On page 72175, Schedule C, Table 2, the entries for the Midwest region and the South region are corrected to read as follows:

2006 Contract Rents, Table 2	Highest Cost Utility	
	Included	Excluded
Midwest Region	1.012	1.003
South Region	1.019	1.014

These changes only affect the report as published in the **Federal Register**. The correct factors were used to update Fair Market Rents. The PHA-designated AAFs do not include this error. It is only an error in the report printed for the **Federal Register** Notice.

Dated: February 9, 2006.

Harold L. Bunce,

Deputy Assistant Secretary for Economic Affairs.

[FR Doc. E6–2148 Filed 2–14–06; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Trustee Council; Notice of Meeting

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the *Exxon Valdez* Oil Spill Public Advisory Committee.

DATES: March 6, 2006, at 10 a.m.

ADDRESSES: Exxon Valdez Oil Spill Trustee Council Office, 441 West 5th Avenue, Suite 500, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 ''C'' Street, Suite 119, Anchorage, Alaska 99501, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Committee was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91–081 CV. The meeting agenda will include a discussion of restoration recommendations related to resources injured by the oil spill.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. E6–2082 Filed 2–14–06; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Notice of Natural Resource Damage Assessment and Restoration Advisory Committee Meeting

AGENCY: Office of the Secretary, Natural Resource Damage Assessment and Restoration Program Office.

ACTION: Notice; FACA Committee Meeting Announcement.

SUMMARY: As required by the Federal Advisory Committee Act, Public Law 92–463, the Department of the Interior, Natural Resource Damage Assessment and Restoration Program Office gives notice of the second meeting of the Department's Natural Resource Damage Assessment and Restoration Advisory Committee. The Advisory Committee will meet at the U.S. Department of the Interior, South Building Auditorium, 1951 Constitution Avenue NW., Washington, DC 20240 from 8:30 a.m. to 5 p.m. on March 2, 2006. Members of the public are invited to attend the Committee Meeting to listen to the committee proceedings and to provide public input.

Public Input: Any member of the public interested in providing public input at the Committee Meeting should contact Mr. Steve Glomb, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Each individual providing oral input is requested to limit those comments to three minutes. This time frame may be adjusted to accommodate all those who would like to speak. Requests to be added to the public speaker list must be received in writing (letter, e-mail, or fax) by noon eastern standard time on February 21, 2006. Anyone wishing to submit written comments should provide a copy of those comments to Mr. Glomb in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file formats are: Adobe Acrobat, WordPerfect, Word, or Rich Text files) by noon eastern standard time on February 21, 2006.

Document Availability: Interested individuals may view the draft agenda for the meeting online at *http://restoration.doi.gov/faca* or may request the draft agenda from Mr. Glomb. In preparation for this meeting of the Advisory Committee, the Committee and the public can find helpful background information at the Restoration Program Web site *http://restoration.doi.gov.* The site provides a good introduction to the program for those who are relatively new to the damage assessment and restoration arena and a useful reference for seasoned practitioners and policy leaders. Links to the statutory and regulatory framework for the program are found at *http://restoration.doi.gov/laws.htm.* DOI Program policies are found at *http://restoration.doi.gov/policy.htm.*

Agenda for Meeting

The agenda will cover the following principal subjects:

—Welcome/Kickoff address by senior Departmental official.
—Potential amendment of committee by-laws.
—Discussion of subcommittee reports.
—Formal public input (if any).
—Finalize subcommittee scopes and workplans.

Meeting Access: Individuals requiring special accommodation at this meeting must contact Mr. Steve Glomb (see contact information below) by noon eastern standard time on February 21, 2006, so that appropriate arrangements can be made.

DATES: March 2, 2006, from 8:30 a.m. to 5 p.m. (open to the public).

ADDRESSES: Auditorium, U.S Department of the Interior, South Building, 1951 Constitution Avenue NW., Washington, DC 20240.

All individuals attending the Committee Meeting will be required to present photo identification to security officers to gain access to the South Interior Building.

FOR FURTHER INFORMATION CONTACT: Steve Glomb, U.S. Department of the Interior, Natural Resource Damage Assessment and Restoration Program, Mail Stop MIB 4449, 1849 C Street NW., Washington, DC 20240; phone 202–208–4863; fax 202–208–2681; or *steve_glomb@ios.doi.gov.*

Dated: February 9, 2006.

Frank M. DeLuise,

Designated Federal Officer, DOI Natural Resource Damage Assessment and Restoration Advisory Committee.

[FR Doc. E6–2089 Filed 2–14–06; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; 5-Year Review of Florida Scrub-Jay

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 5-year review of the Florida scrub-jay (*Aphelocoma coerulescens*) under section 4(c)(2) of the Endangered Species Act of 1973, as amended (Act). The purpose of reviews conducted under this section of the Act is to ensure that the classification of species as threatened or endangered on the List of Endangered and Threatened Wildlife and Plants (50 CFR 17.11 and 17.12) is accurate. The 5-year review is an assessment of the best scientific and commercial data available at the time of the review.

DATES: To allow us adequate time to conduct this review, information submitted for our consideration must be received on or before April 17, 2006. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: You may submit data, information, and comments by any of the following methods:

1. You may submit written comments and information to the Field Supervisor, Jacksonville Ecological Services Office, 6620 Southpoint Drive South, Suite 310, Jacksonville, FL 32216.

2. You may hand-deliver written comments to our Office, at the above address.

3. You may send comments by electronic mail (e-mail) to *floridascrubjay@fws.gov*. Include ''Florida Scrub-Jay Five-Year Review'' in the subject line of the message.

4. You may fax your comments to 904/232–2404.

FOR FURTHER INFORMATION CONTACT: Dawn Zattau, Jacksonville Field Office at telephone (904) 232–1067.

SUPPLEMENTARY INFORMATION: Under the Act (16 U.S.C. 1533 *et seq.*), the Service maintains a list of endangered and threatened wildlife and plant species at 50 CFR 17.11 (for animals) and 17.12 (for plants) (collectively referred to as the List). Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. Then, on the basis of such reviews, under section 4(c)(2)(B), we determine whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened or from threatened to endangered. Delisting a species must be supported by the best scientific and commercial data available and only considered if such data substantiate that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification would require a separate rulemaking process. The regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the Florida scrub-jay that is currently listed as threatened.

The List is found at 50 CFR 17.11 (wildlife) and 17.12 (plants) and is also available on our Internet site at *http://www.fws.gov/endangered/wildlife.html#species.* Amendments to the List through final rules are published in the **Federal Register**.

What information is considered in the review?

A 5-year review considers all new information available at the time of the review. A 5-year review will consider the best scientific and commercial data that have become available since the current listing determination or most recent status review of each species, such as:

A. Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions, including but not limited to amount, distribution, and suitability;

C. Conservation measures that have been implemented to benefit the species;

D. Threat status and trends (see five factors under heading ''How do we determine whether a species is endangered or threatened?''); and

E. Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Specific Information Requested for the Florida Scrub-Jay

We are especially interested in information on the status of this species throughout its range. We specifically request any recent information regarding its responses to prescribed fire and any other management actions on conservation lands.

Definitions Related to This Notice

The following definitions are provided to assist those persons who contemplate submitting information regarding the species being reviewed:

A. *Species* includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate which interbreeds when mature.

B. *Endangered* means any species that is in danger of extinction throughout all or a significant portion of its range.

C. *Threatened* means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

How do we determine whether a species is endangered or threatened?

Section 4(a)(1) of the Act establishes that we determine whether a species is endangered or threatened based on one or more of the following five factors:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Disease or predation;

D. The inadequacy of existing regulatory mechanisms; or

E. Other natural or manmade factors affecting its continued existence.

Section 4(a)(1) of the Act requires that our determination be made on the basis of the best scientific and commercial data available.

What could happen as a result of this review?

If we find that there is new information concerning this species indicating that a change in classification may be warranted, we may propose a new rule that could do one of the following: (a) Reclassify the species from threatened to endangered (uplist) or (b) delist the species. If we determine that a change in classification is not warranted, then this species will remain on the List under its current status.

Public Solicitation of New Information

We request any new information concerning the status of this species. See ''What information is considered in the review?'' heading for specific criteria. Information submitted should be supported by documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources. Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home addresses from the supporting record, which we will honor to the extent allowable by law. There also may be circumstances in which we may withhold from the supporting record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will not consider anonymous comments, however. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Authority

This document is published under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: January 31, 2006.

Cynthia K. Dohner,

Acting Regional Director, Southeast Region.

[FR Doc. E6–2134 Filed 2–14–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Acceptance of Retrocession of Jurisdiction for the Santee Sioux Nation, NE

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the authority vested in the Secretary of the Interior by Executive Order No. 11435 of November 21, 1968 (33 FR 17339), and redelegated to the Associate Deputy Secretary, I hereby accept at 12:01 a.m. CST, February 15, 2006, retrocession to the United States of civil and criminal jurisdiction over the Santee Sioux Nation, which was acquired by the State of Nebraska, pursuant to Public Law 83–280, 67 Stat. 588, 18 U.S.C. 1162, 28 U.S.C. 1360.

The retrocession herein accepted was offered by Legislative Resolution 17 by the legislature of the State of Nebraska on May 31, 2001, and transmitted to the Secretary on November 13, 2001. By Resolution No. 2001–12 dated December 20, 2000, the Santee Sioux Nation requested that the State of Nebraska retrocede civil and criminal jurisdiction to the United States.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher B. Chaney, Deputy Bureau Director, Bureau of Indian Affairs, Office of Law Enforcement Services, 1849 C Street, NW., Mail Stop 2429, Washington, DC 20240, Telephone number (202) 208–5787.

Dated: February 8, 2006.

James E. Cason,

Associate Deputy Secretary.

[FR Doc. 06–1437 Filed 2–10–06; 8:45 am]

BILLING CODE 4310–G6–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–06–1310–EPAI]

Implementation of the Split Estate Section 1835 of the Energy Policy Act of 2005; Listening Sessions

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public listening sessions.

SUMMARY: Listening sessions will be held by the Bureau of Land Management to solicit suggestions from the public on how best to implement the split estate provisions of the Energy Policy Act of 2005. Section 1835 of the Energy Policy Act directs the Secretary of the Interior to review current policies and practices for managing oil and gas resources in split estate situations, that is, how the BLM provides for oil and gas development and environmental protection where the surface estate is privately owned and the mineral estate is owned and administered by the Federal Government. The Act directs that this review be conducted in consultation with affected private surface owners, oil and gas industry, and other interested parties.

Dates and Locations: Listening Sessions will be scheduled during late March 2006 in Colorado, Montana, New Mexico, Wyoming, and Washington, DC. The BLM will announce exact times and locations through the local media, e-mail, and on the Split Estate Web site at: *http://www.blm.gov/bmp* at least 15 days prior to the listening sessions.

FOR FURTHER INFORMATION CONTACT: Jim Perry, Senior Natural Resource Specialist for the BLM Fluid Minerals Program at (202) 452–5063, or visit the Split Estate Web site at *http://www.blm.gov/bmp.*

SUPPLEMENTARY INFORMATION: The listening sessions will begin with an overview of the split estate provisions of the Energy Policy Act and current split estate practices, policies, regulations, and laws that guide management of the Federal mineral estate. Participants who request to speak will be provided a set amount of time to provide recommendations for managing oil and gas resources in split estate situations.

Dated: February 7, 2006.

Thomas P. Lonnie,

Assistant Director, Minerals, Realty and Resource Protection.

[FR Doc. E6–2092 Filed 2–14–06; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

Fee Rates

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given, pursuant to 25 CFR 514.1(a)(3), that the National Indian Gaming Commission has adopted preliminary annual fee rates of 0.00% for tier 1 and 0.053% (.00053) for tier 2 for calendar year 2006. These rates shall apply to all assessable gross revenues from each gaming operation under the jurisdiction of the Commission. If a tribe has a certificate of self-regulation under 25 CFR part 518, the preliminary fee rate on class II revenues for calendar year 2006 shall be one-half of the annual fee rate, which is 0.0265% (.000265).

FOR FURTHER INFORMATION CONTACT: Bobby Gordon, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005; telephone 202/632–7003; fax 202/632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act established the National Indian Gaming Commission whish is charged with, among other things, regulating gaming on Indian lands.

The regulations of the Commission (25 CFR part 514), as amended, provide for a system of fee assessment and payment that is self-administered by gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates; the gaming operations are required to apply those rates to their revenues, compute the fees to be paid, report the revenues, and remit the fees to the Commission on a quarterly basis.

The regulations of the Commission and the preliminary rate being adopted today are effective for calendar year 2006. Therefore, all gaming operations within the jurisdiction of the Commission are required to self-administer the provisions of these regulations and report and pay any fees that are due to the Commission by March 31, 2006.

Irene Schrader,

Director of Administration, National Indian Gaming Commission.

[FR Doc. 06–1403 Filed 2–14–06; 8:45 am]

BILLING CODE 7565–01–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–562]

In the Matter of Certain Incremental Dental Positioning Adjustment Appliances and Methods of Producing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 11, 2006, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Align Technology, Inc. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain incremental dental positioning adjustment appliances by reason of infringement of claims 1–36, 38, 42–49, and 51–58 of U.S. Patent No. 6,685,469; claim 1 of U.S. Patent No. 6,450,807; claims 1–4 of U.S. Patent No. 6,394,801; claims 21, 22, 24–30, 32–36, 38, and 39 of U.S. Patent No. 6,398,548; claims 1, 2, 4–8, 10, and 12–18 of U.S. Patent No. 6,722,880; claims 1–3, 6–8, and 11 of U.S. Patent No. 6,629,840; claims 1, 2, 9, and 10 of U.S. Patent No. 6,699,037; claims 1–18, 20–23, 25, 26, and 29–38 of U.S. Patent No. 6,318,994; claims 1–22 and 28 of U.S. Patent No. 6,729,876; claims 34–56 and 59–65 of U.S. Patent No. 6,602,070; claims 1–6, 9, and 10 of U.S. Patent No. 6,471,511; and claims 1–13, 15, 16, and 18 of U.S. Patent No. 6,227,850; and also by reason of misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by

contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2579.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2005).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on February 7, 2006, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) Whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain incremental dental positioning adjustment appliances by reason of infringement of one or more of claims 1–36, 38, 42–49, and 51–58 of U.S. Patent No. 6,685,469; claim 1 of U.S. Patent No. 6,450,807; claims 1–4 of U.S. Patent No. 6,394,801; claims 21, 22, 24–30, 32–36, 38, and 39 of U.S. Patent No. 6,398,548; claims 1, 2, 4–8, 10, and 12–18 of U.S. Patent No. 6,722,880; claims 1–3, 6–8, and 11 of U.S. Patent No. 6,629,840; claims 1, 2, 9, and 10 of U.S. Patent No. 6,699,037; claims 1–18, 20–23, 25, 26, and 29–38 of U.S. Patent No. 6,318,994; claims 1–22 and 28 of U.S. Patent No. 6,729,876; claims 34–56 and 59–65 of U.S. Patent No. 6,602,070; claims 1–6, 9, and 10 of U.S. Patent No. 6,471,511; and claims 1–13, 15, 16, and 18 of U.S. Patent No. 6,227,850, and whether an industry in the United States exists as required by subsection (a)(2) of section 337; or

(b) Whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States of certain incremental dental positioning adjustment appliances or in the sale of such articles by reason of misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Align Technology, Inc., 881 Martin Avenue, Santa Clara, California 95050.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

OrthoClear, Inc., 580 California St., Suite 1725, San Francisco, CA 94104

OrthoClear Holdings, Inc., c/o Walkers (BV) Limited, Walkers Chambers, P.O. Box 92, Tortola, British Virgin Islands

OrthoClear Pakistan Pvt, Ltd., 8-Aitchison Rd., 1-km Thoker, Niaz Baig, Raiwind Rd., Lahore, Pakistan

(c) Jay H. Reiziss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Robert L. Barton, Jr. is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: February 9, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–2164 Filed 2–14–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–549]

In the Matter of Certain Ink Sticks for Solid Ink Printers; Notice of Request for Written Submissions on Remedy, the Public Interest, and Bonding With Respect to the Respondents Found in Default

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission is requesting briefing on remedy, the public interest, and bonding with respect to two respondents previously found in default.

FOR FURTHER INFORMATION CONTACT: Michelle Walters, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation by notice on September 6, 2005, based on a complaint filed by Xerox Corporation (''Xerox'') of Stamford, Connecticut. The complaint, as amended, alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ink sticks used in solid ink printers by reason of infringement of claim 16 of United States Patent No. 6,739,713, claims 5–10 and 13–14 of United States Patent No. 6,840,613, and claims 1–2 of United States Patent No. 6,840,612. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation

names HANA Corporation (''HANA'') of Seoul, Republic of Korea, and InkSticks.com of Cheyenne, Wyoming, as respondents.

On October 26, 2005, complainant Xerox moved pursuant to 19 U.S.C. 1337(g)(1) and Commission Rule 210.16 for an order (1) directing HANA and Inksticks.com to show cause why each should not be found in default for failing to respond to the complaint and notice of investigation, and (2) upon failure of the respondents to show such cause, for an initial determination (''ID'') finding the respondents in default. The administrative law judge (''ALJ'') issued an ID on December 20, 2005, finding HANA and InkSticks.com in default, because neither respondent replied to the complaint or notice of investigation, and neither respondent replied to the show cause order issued by the ALJ on November 5, 2005. The Commission declined to review the ALJ's determination that respondents HANA and Inksticks.com, the only respondents named in the investigation, defaulted.

On January 19, 2006, Xerox filed a declaration requesting immediate relief against the defaulting respondents with proposed remedial orders attached. Section 337(g)(1) (19 U.S.C. 1337(g)(1)) and Commission Rule 210.16(c) (19 CFR 210.16(c)) authorize the Commission to order limited relief against a respondent found in default, unless after consideration of the public interest factors, it finds that such relief should not issue. The Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry are either adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist order would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainant and the investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. There is no need to duplicate filings previously made. Complainant is requested to state the dates that the patents at issue expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on February 24, 2006. Reply submissions must be filed no later than the close of business on March 3, 2006. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.16 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.16 and 210.50).

By order of the Commission.

Issued: February 10, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–2165 Filed 2–14–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. Nos. 701–TA–309–A–B and 731–TA–528 (Review) (Remand)]

Magnesium From Canada; Notice and Scheduling of Remand Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: The U.S. International Trade Commission (''Commission'') hereby gives notice that it is inviting the parties to the North American Free Trade Agreement (NAFTA) Chapter 19 panel proceeding in *Magnesium from Canada,* USA–CDA–00–1904–09, to file comments in the remand proceeding ordered by the NAFTA binational panel.

FOR FURTHER INFORMATION CONTACT: Peter L. Sultan, Esq., Office of the General Counsel, telephone (202) 205–3094, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Background

On July 16, 2002, a NAFTA Panel remanded the Commission's affirmative sunset review determination in *Magnesium from Canada,* Inv. Nos. 701–TA–309–A–B and 731–TA–528 (Review), USITC Pub. 3324 (July 2000). In response, the Commission submitted a remand determination to the Panel in October 2002. On January 17, 2006, the NAFTA Panel affirmed in part and

remanded in part the Commission's 2002 remand determination. The Panel remanded the determination to the Commission with an order to take further action consistent with its instructions. The Commission is directed to issue its remand determination within 60 days of the issuance of the Panel's decision, *i.e.*, by March 17, 2006.

Participation in the Remand Proceedings

Only the parties to the NAFTA Chapter 19 panel proceeding may participate in this remand proceeding. No additional filings with the Commission will be necessary for these parties to participate in the remand proceeding. Business proprietary information (''BPI'') referred to during the remand proceeding will be governed, as appropriate, by the administrative protective order issued in the sunset reviews.

Written Submissions

The Commission invites the parties to the NAFTA Chapter 19 panel proceeding to file comments on or before February 21, 2006, with respect to how the record bears on the Panel's instruction that the Commission ''provide further reasoned analysis supported by substantial evidence on the record, including any factual evidence not referred to in its Views on Remand, as to the conclusion that Magnola would enter the market by underselling in order to establish export volumes that would be significant in relation to anticipated demand increases.''

These comments must be limited to the precise issue in the Panel's remand instruction quoted above, and must be based solely on the information already in the Commission's record and may not include additional factual information. Comments shall not exceed fifteen (15) pages of textual material, double-spaced and single-sided, on stationery measuring 8½ x 11 inches.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (Nov. 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the NAFTA Chapter 19 panel proceeding must be served on all other such parties, and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Parties are also advised to consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207) for provisions of general applicability concerning written submissions to the Commission.

Authority: This action is taken under the authority of the Tariff Act of 1930, title VII.

By order of the Commission.

Issued: February 9, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–2070 Filed 2–14–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental *Response, Compensation, and Liability Act*

Notice is hereby given that on February 3, 2006, an electronic version of a proposed consent decree was lodged in the United States District Court for the District of South Carolina in *United States* v. *Exxon Mobile Corporation, et al.*, No. 7:06–00360–GRA (D.S.C.). The consent decree settles the United States' claims against numerous defendants under section 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606 and 9607, in connection with the Aqua-Tech Environmental, Inc. (Groce Labs) Superfund Site near Greer, South Carolina (the ''Site''). Under the proposed consent decree, 79 settling defendants will perform the Remedial Design and Remedial Action for the Site and reimburse the United States Environmental Protection Agency (''EPA'') for past and future costs.

In connection with the proposed consent decree, the United States, on behalf of 13 settling federal agencies, will contribute funds to pay EPA's past costs and to fund the future work. A fourteenth settling federal agency, the U.S. Postal Service, will make a lump sum payment to EPA for past costs and will make a lump sum payment to the settling defendants to fund the work.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Exxon Mobil Corporation, et al.*, No. 7:06–CV–00360–GRA (D.S.C.) and DOJ #90–113–08483.

The consent decree may be examined at the Office of the United States Attorney for this District of South Carolina 1441 Main Street, Suite 500 Columbia, South Carolina 29201. During the public comment period, the consent decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html*. A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood, *tonia.fleetwood@usdoj.gov*, Fax No. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $33.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–1421 Filed 2–14–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Resource Conservation and Recovery Act

Under 28 CFR 50.7, notice is hereby given that on January 25, 2006, a proposed Consent Decree in *United States* v. *City of New York*, Civil Action No. 02–9653, was lodged with the United States District Court for the Southern District of New York.

The City operates over 1,600 underground storage tanks (''USTs''), which it uses to distribute fuel for use in City-owned vehicles. The United States filed a complaint in December 2002 alleging various violations of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6991e, and its implementing regulations governing USTs regarding these tanks, including: Failure to upgrade the tanks to prevent leaks; failure to implement methods for detecting leaks; failure to investigate suspected leaks; and various related recordkeeping violations. The proposed settlement provides for the City to pay

a $1.3 million civil penalty, to come into compliance with RCRA including to upgrade its tanks, and to monitor its tanks for leaks. The proposed settlement also provides for the City to implement injunctive relief, including installation of a centralized monitoring system for all USTs operated by three city agencies: the Fire Department, the Department of Transportation, and the Police Department.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *City of New York*, D.J. No. 90–7–1–07807.

The Consent Decree may be examined at the Office of the United States Attorney, 86 Chambers Street, New York, New York 10007, and at the Region II Office of the U.S. Environmental Protection Agency, Region II Records Center, 290 Broadway, 17th Floor, New York, NY 10007–1866. During the public comment period, the Consent Decree also may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $4.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–1420 Filed 2–14–06; 8:45 am]

BILLING CODE 4410–15–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 06-10801]

Section 108 Study Group: Copyright Exceptions for Libraries and Archives

AGENCY: Office of Strategic Initiatives and Copyright Office, Library of Congress.

ACTION: Notice of public roundtables with request for comments.

SUMMARY: The Section 108 Study Group of the Library of Congress seeks comment on certain issues relating to the exceptions and limitations applicable to libraries and archives under section 108 of the Copyright Act, and announces public roundtable discussions. This notice (1) requests written comments from all interested parties on the specific issues identified in this notice, and (2) announces public roundtable discussions regarding certain of those issues, as described in this notice. The issues covered in this notice relate primarily to eligibility for the section 108 exceptions and copies made for purposes of preservation and replacement.

DATES: *Roundtable Discussions*: The first public roundtable will be held in Los Angeles, California on Wednesday, March 8, 2006, from 8:30 a.m. to 4 p.m. P.S.T. An additional roundtable will be held in Washington, DC on Thursday, March 16, 2006 from 9 a.m. to 4:30 p.m. E.S.T. Requests to participate in either roundtable must be received by the Section 108 Study Group by 5 p.m. E.S.T. on February 24, 2006.

Written Comments: Interested parties may submit written comments on any of the topics discussed in this notice after 8:30 a.m. E.S.T. on March 17, 2006, and on or before 5 p.m. E.S.T. on April 17, 2006.

ADDRESSES: All written comments and requests to participate in roundtables should be addressed to Mary Rasenberger, Policy Advisor for Special Programs, U.S. Copyright Office. Comments may be sent (1) by electronic mail (preferred) to the e-mail address section108@loc.gov; (2) by commercial, non–government courier or messenger, addressed to the U.S. Copyright Office, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000, and delivered to the Congressional Courier Acceptance Site (CCAS), 2nd and D Streets, NE., Washington, DC, between 8:30 a.m. and 4 p.m. E.S.T.; or (3) by hand delivery by a private party to the Public Information Office, U.S. Copyright Office, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000, between 8:30 a.m. and 5 p.m. E.S.T. *(See* **Supplementary Information**, Section 4: ''Procedures for Submitting Requests to Participate in Roundtable Discussions and for Submitting Written Comments'' below for file formats and other information about electronic and non–electronic submission requirements.) Submission by overnight service or regular mail will not be effective.

The public roundtable in Los Angeles, California will be held at the UCLA School of Law, Room 1314, Los Angeles, CA 90095, on Wednesday, March 8, 2006. The public roundtable in Washington, DC will be held in the Rayburn House Office Building, Room 2237, Washington, DC 20515, on Thursday, March 16, 2006.

FOR FURTHER INFORMATION CONTACT: Chris Weston, Attorney–Advisor, U.S. Copyright Office, E-mail: cwes@loc.gov; Telephone (202) 707–2592; Fax (202) 252–3173.

SUPPLEMENTARY INFORMATION:

1. Background

The Section 108 Study Group was convened in April 2005 under the sponsorship of the Library of Congress's National Digital Information Infrastructure and Preservation Program (NDIIPP) in cooperation with the U.S. Copyright Office. The Study Group is charged with examining how the section 108 exceptions and limitations may need to be amended, specifically in light of the changes produced by the widespread use of digital technologies. More detailed information regarding the Section 108 Study Group can be found at *www.loc.gov/section108.*

To date, the Study Group has principally focused on the issues identified in this notice, namely those relating to: (1) Eligibility for the section 108 exceptions; (2) amendments to the preservation and replacement exceptions in subsections 108 (b) and (c), including amendments to the three–copy limit, the subsection 108(c) triggers, the separate treatment of unpublished works, and off–site access restrictions; (3) proposal for a new exception to permit the creation of preservation–only/restricted access copies in limited circumstances; and (4) proposal for a new exception to permit capture of websites and other online content. Pursuant to 2 U.S.C. 136, the Study Group now seeks input, through both written comment and participation in the public roundtables described in this notice, on whether there are compelling concerns in any of the areas identified that merit a legislative or other solution and, if so, what solutions might effectively address those concerns without conflicting with the legitimate interests of authors and other rights–holders.

2. Areas of Inquiry

Public Roundtables. Due to time constraints, the Study Group will not be

discussing all of the issues addressed in this notice at the March roundtables. Each of the four general topic areas will be addressed, but discussion of the second topic area (''Amendments to current subsections 108(b) and (c)'') will be limited to off–premises access. As noted below, written comments, however, may address any of the issues set out in this notice. Participants in the roundtable discussions will be asked to respond to the specific questions set forth below (*see* **Supplementary Information**, Section 3: ''Specific Questions'') during discussions on each of the four following topics, at the following places and times:

A. Eligibility for the section 108 exceptions:
Los Angeles, CA: Wednesday, March 8, morning session
Washington, DC: Thursday, March 16, morning session

B. Proposal to amend subsections 108(b) and (c) to allow access outside the premises in limited circumstances:
Los Angeles, CA: Wednesday, March 8, morning session
Washington, DC: Thursday, March 16, morning session

C. Proposal for a new exception for preservation–only/restricted access copying:
Los Angeles, CA: Wednesday, March 8, afternoon session
Washington, DC: Thursday, March 16, afternoon session

D. Proposal for a new exception for the preservation of websites:
Los Angeles, CA: Wednesday, March 8, afternoon session
Washington, DC: Thursday, March 16, afternoon session

Written Comments. The Study Group seeks written comment on each of the topic areas identified in this notice. Comment will be sought on other general topics pertaining to section 108–such as making copies upon patron request, interlibrary loan, eReserves, and licensing–at a later date (and may be the subject of future roundtables).

3. Specific Questions

The Study Group seeks comment and participation in the roundtable discussions on the questions set forth below. Background information and a more detailed discussion of the issues can be found in the document titled ''Information for the March 2006 Public Roundtables and Request for Written Comments'' located on the Section 108 Study Group Web site at http://www.loc.gov/section108. It is important to read this background document in order to obtain a full understanding of the issues surrounding the following questions and provide appropriate input through written comments or participation in the roundtable discussions.

Topic 1: Eligibility for Section 108 Exceptions

Should further definition of the terms ''libraries'' and ''archives'' (or other types of institutions) be included in section 108, or additional criteria for eligibility be added to subsection 108(a)?

Should eligible institutions be limited to nonprofit and government entities for some or all of the provisions of section 108? What would be the benefits or costs of limiting eligibility to institutions that have a nonprofit or public mission, in lieu of or in addition to requiring that there be no purpose of commercial advantage?

Should non–physical or ''virtual'' libraries or archives be included within the ambit of section 108? What are the benefits of or potential problems of doing so?

Should the scope of section 108 be expanded to include museums, given the similarity of their missions and activities to those of libraries and archives? Are there other types of institutions that should be considered for inclusion in section 108?

How can the issue of outsourcing be addressed? Should libraries and archives be permitted to contract out any or all of the activities permitted under section 108? If so, under what conditions?

Topic 2: Amendments To Current Subsections 108(b) and (c)

Three Copy Limit. (This topic will not be addressed at the March roundtable discussions.) Should the three–copy limit in subsections 108 (b) and (c) be replaced with a flexible standard more appropriate to the nature of digital materials, such as ''a limited number of copies as reasonably necessary for the permitted purpose''? Would such a conceptual, as opposed to numerical, limit be sufficient to protect against potential market harm to rights–holders? What other limits could be used in place of an absolute limit on the number of copies made?

As an alternative, should the number of existing or permanent copies be limited to a specific number? Or, would it be sufficiently effective to instead tighten controls on access?

Are there any compelling reasons to also revise the three–copy limit for analog materials?

Additional Triggers under Subsection 108(c).(This topic will not be addressed at the March roundtable discussions.) To address the potential of loss before a replacement copy can be made, should subsection 108(c) be revised to permit the making of such copies prior to actual deterioration or loss? Specifically, should concepts such as ''unstable'' or ''fragile'' be added to the existing triggers–damaged, deteriorating, lost, stolen, or obsolete– to allow replacement copies to be made when it is known that the media is at risk of near–term loss? In other words, should libraries and archives be able to make ''pre–emptive'' replacement copies before deterioration occurs for particularly unstable digital materials–bearing in mind that a search must first be made for an unused copy? If so, how should such concepts be further refined or defined so as not to include all digital materials?

Are there any analog materials that similarly are so fragile that they are at risk of becoming unusable and unreadable almost immediately–and where the ability to create stable replacement copies prior to loss would be equally important?

What are the risks to rights–holders of expanding subsection 108(c) in this manner? How could those risks be minimized or addressed?

Published versus Unpublished Works. (This topic will not be addressed at the March roundtable discussions.) Are there any compelling reasons to revisit section 108's separate treatment of unpublished and published works in subsections 108(b) and (c), respectively? Are there other areas where unpublished and published works should receive different treatment under section 108 than those currently specified in the statute? Are there any reasons to distinguish in section 108 between unpublished digital and unpublished analog works?

Should section 108 take into account the right of first publication with respect to unpublished works? If so, why and in what manner? Would the right of first publication, for instance, dictate against allowing libraries and archives to ever permit online access to unpublished materials–even with the user restrictions described above?

Should section 108 treat unpublished works intended for publication differently from other unpublished materials, and if so, how?

Access to Digital Copies Made under Subsections 108(b) and (c). Are there conditions under which electronic access to digital preservation or replacement copies should be permitted under subsections 108 (b) or (c) outside the premises of libraries or archives (*e.g.*, via e–mail or the Internet or lending of a CD or DVD)? If so, what conditions or restrictions should apply?

Should any permitted off–site access be restricted to a library's or archives' ''user community''? How would this

community be defined for the different types of libraries? To serve as an effective limit, should it represent an existing and well–defined group of users of the physical premises, rather than a potential user group (*e.g.*, anyone who pays a member fee)? Should off–site electronic access only be available where a limited and well–defined user community can be shown to exist?

Should restricting remote access to a limited number of simultaneous users be required for any off–site use? Would this provide an effective means of controlling off–site use of digital content so that the use parallels that of analog media? If a limit on simultaneous users is required for off–site access to unlicensed material, what should that number be? Should only one user be permitted at a time for each legally acquired copy? Do effective technologies exist to enforce such limits?

Should the use of technological access controls by libraries and archives be required in connection with any off–site access to such materials? Do the relevant provisions of the TEACH Act (17 U.S.C. 110(2)) provide a good model? Would it be effective to also require library and archive patrons desiring off–site access to sign or otherwise assent to user agreements prohibiting downloading, copying and downstream transmission?

Should the rules be different depending on whether the replacement or preservation copy is a digital tangible copy or intangible electronic copy (*e.g.*, a CD versus an MP3 file) or if the copies originally acquired by the library or archive were acquired in analog, tangible or intangible digital formats? What are the different concerns for each?

Topic 3: New Preservation–Only Exception

Given the characteristics of digital media, are there compelling reasons to create a new exception that would permit a select group of qualifying libraries and archives to make copies of ''at risk'' published works in their collections solely for purposes of preserving those works, without having to meet the other requirements of subsection 108(c)? Does the inherent instability of all or some digital materials necessitate up–front preservation activities, prior to deterioration or loss of content? If so, should this be addressed through a new exception or an expansion of subsection 108(c)? How could one craft such an exception to protect against its abuse or misuse? How could rights–holders be assured that these ''preservation'' copies would not serve simply as additional copies available in the library or archives' collections? How could rights–holders be assured that the institutions making and maintaining the copies would maintain sufficient control over them?

Should the exception only apply to a defined subset of copyrighted works, such as those that are ''at risk''? If so, how should ''at risk'' (or a similar concept) be defined? Should the exception be applicable only to digital materials? Are there circumstances where such an exception might also be justified for making digital preservation copies of ''at risk'' analog materials, such as fragile tape, that are at risk of near–term deterioration? If so, should the same or different conditions apply?

Should the copies made under the exception be maintained in restricted archives and kept out of circulation unless or until another exception applies? Should eligible institutions be required to establish their ability and commitment to retain materials in restricted (or ''dark'') archives?

Should only certain trusted preservation institutions be permitted to take advantage of such an exception? If so, how would it be determined whether any particular library or archives qualifies for the exception? Should eligibility be determined solely by adherence to certain statutory criteria? Or should eligibility be based on reference to an external set of best practices or a standards–setting or certification body? Should institutions be permitted to self–qualify or should there be some sort of accreditation, certification or audit process? If the latter, who would be responsible for determining eligibility? What are the existing models for third party qualification or certification? How would continuing compliance be monitored? How would those failing to continue to meet the qualifications be disqualified? What would happen to the preservation copies in the collections of an institution that has been disqualified? Further, should qualified institutions be authorized to make copies for other libraries or archives that can show they have met the conditions for making copies under subsections 108(c) or (h)?

Topic 4: New Website Preservation Exception

Given the ephemeral nature of websites and their importance in documenting the historical record, should a special exception be created to permit the online capture and preservation by libraries and archives of certain website or other online content? If so, should such an exception be similar to section 108(f)(3), which permits libraries and archives to capture audiovisual news programming off the air? Should such an exception be limited to a defined class of sites or online content, such as non–commercial content/ sites (i.e., where the captured content is not itself an object of commerce), so that news and other media sites are excluded? Should the exception be limited to content that is made freely available for public viewing and/or downloading without access restrictions or user registration?

Should there be an opt–out provision, whereby an objecting site owner or rights–holder could request that a particular site not be included? Should site owners or operators be notified ahead of the crawl that captures the site that the crawl will occur? Should ''no archive'' meta–tags, robot.txt files, or similar technologies that block sites or pages from being crawled be respected?

Should the library or archive be permitted to also copy and retain a copy of a site's underlying software solely for purposes of preserving the site's original experience (provided no use is permitted other than to display/use the website)?

If libraries and archives are permitted to capture online content, should there be any restrictions on public access? Should libraries and archives be allowed to make the copies thus captured and preserved available electronically, or only on the premises? If electronically available, under what conditions? Should the lapse of a certain period of time be required? Should labeling be required to make clear that captured pages or content are copies preserved by the library or archive and not from the actual site, in order to avoid confusion with the original site and any updated content?

4. Procedure for Submitting Requests to Participate in Roundtable Discussions and for Submitting Written Comments

Requests to Participate in Roundtable Discussions. The roundtable discussions will be open to the public. However, persons wishing to participate in the discussions must submit a written request to the Section 108 Study Group. The request to participate must include the following information: (1) The name of the person desiring to participate; (2) the organization(s) represented by that person, if any; (3) contact information (address, telephone, telefax, and e–mail); and (4) a written summary of no more than four pages identifying, in order of preference, in which of the four general roundtable topic areas the participant (or his or her organization)

would most like to participate and the specific questions the participant wishes to address for each general roundtable topic area.

The written summary must also identify the preferred date/location (*see***Supplementary Information**, Section 2, ''Areas of Inquiry: Public Roundtables'' above for detail). Space and time constraints may require us to limit participation in one or more of the topic areas, and it is likely that not all requests to participate will be granted. Identification of the desired topic areas in order of preference will help the Study Group to ensure that participants will be heard in the area(s) of interest most critical to them. The Study Group will notify each participant in advance of his or her designated topic area(s), and the corresponding time(s) and location(s).

Note also for those who wish to attend but not participate in the roundtables that space is limited. Seats will be available on a first– come, first–served basis. However, all discussions will be transcribed, and transcripts subsequently made available on the Section 108 Study Group Web site (http://www.loc.gov/section108).

Written Comments. Written comments must include the following information: (1) The name of the person making the submission; (2) the organization(s) represented by that person, if any; (3) contact information (address, telephone, telefax, and e–mail); and (4) a statement of no more than 10 pages, responding to any of the general issues or specific questions in this notice.

Submission of Both Requests to Participate in Roundtable Discussions and Written Comments. In the case of submitting a request to participate in the roundtable discussions or of submitting written comments, submission should be made to the Section 108 Study Group by e–mail (preferred) or by hand delivery by a commercial courier or by a private party to the appropriate address listed above. Submission by overnight delivery service or regular mail will not be effective due to delays in processing receipt.

If by e–mail (preferred): Send to the e–mail address section108@loc.gov a message containing the information required above for the request to participate or the written submission, as applicable. The summary of issues (for the request to participate in the roundtable discussions) or statement (for the written comments), as applicable, may be included in the text of the message, or may be sent as an attachment. If sent as an attachment, the summary of issues or written statement must be in a single file in either: (1) Adobe Portable Document File (PDF) format; (2) Microsoft Word version 2000 or earlier; (3) WordPerfect version 9.0 or earlier; (4) Rich Text File (RTF) format; or (5) ASCII text file format.

If by hand delivery by a private party or a commercial, non–government courier or messenger: Deliver to the appropriate address listed above, a cover letter with the information required above, and include two copies of the summary of issues or written statement, as applicable, each on a write–protected 3.5–inch diskette or CD–ROM, labeled with the legal name of the person making the submission and, if applicable, his or her title and organization. The document itself must be in a single file in either (1) Adobe Portable Document File (PDF) format; (2) Microsoft Word Version 2000 or earlier; (3) WordPerfect Version 9 or earlier; (4) Rich Text File (RTF) format; or (5) ASCII text file format.

Anyone who is unable to submit a comment in electronic form (either through electronic e–mail or hand delivery of a diskette or CD–ROM) should submit, with a cover letter containing the information required above, an original and three paper copies of the summary of issues (for the request to participate in the roundtable discussions) or statement (for the written comments) by hand to the appropriate address listed above.

Dated: February 9, 2006.

Marybeth Peters,

Register of Copyrights.

[FR Doc. E6–2127 Filed 2–14–06; 8:45 am]

BILLING CODE 1410–21–F

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of a currently approved information collection, the Financial Disclosure Report, Standard Form 714, that is used to make personnel security determinations, including whether to grant a security clearance, to allow access to classified information, sensitive areas, and equipment; or to permit assignment to a sensitive national security position. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before April 17, 2006 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–837–3213; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways, including the use of information technology, to minimize the burden of the collection of information on all respondents; and (e) whether small businesses are affected by this collection. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Financial Disclosure Report.

OMB number: 3095–0058.

Agency form number: Standard Form 714.

Type of review: Regular.

Affected public: Business or other for-profit.

Estimated number of respondents: 25,897.

Estimated time per response: 2 hours.

Frequency of response: On occasion.

Estimated total annual burden hours: 51,794 hours.

Abstract: Executive Order 12958 as amended, ''Classified National Security Information'' authorizes the Information Security Oversight Office to develop standard forms that promote the

implementation of the Government's security classification program. These forms promote consistency and uniformity in the protection of classified information.

The Financial Disclosure Report contains information that is used to make personnel security determinations, including whether to grant a security clearance; to allow access to classified information, sensitive areas, and equipment; or to permit assignment to sensitive national security positions. The data may later be used as a part of a review process to evaluate continued eligibility for access to classified information or as evidence in legal proceedings.

The Financial Disclosure Report helps law enforcement obtain pertinent information in the preliminary stages of potential espionage and counter terrorism cases.

Dated: February 9, 2006.

Martha Morphy,

Acting Assistant Archivist for Information Services.

[FR Doc. E6–2117 Filed 2–14–06; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

TYPE: Quarterly Meeting.

DATES AND TIMES: March 13–14, 2006, 9 a.m.–5 p.m. e.s.t.

LOCATION: Disney's Coronado Springs Resort, 1001 West Buena Vista Drive, Lake Buena Vista, Florida.

STATUS: This meeting will be open to the public.

AGENDA: Reports from the Chairperson and the Executive Director, Team Reports, Assessment and Planning Session, Unfinished Business, New Business, Announcements, Adjournment.

SUNSHINE ACT MEETING CONTACT: Mark S. Quigley, Director of Communications, NCD, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *mquigley@ncd.gov* (e-mail)

AGENCY MISSION: NCD is an independent Federal agency making recommendations to the President and Congress to enhance the quality of life for all Americans with disabilities and their families. NCD is composed of 15 members appointed by the President and confirmed by the U.S. Senate.

ACCOMMODATIONS: Those needing reasonable accommodations should notify NCD at least two weeks before this meeting.

LANGUAGE TRANSLATION: In accordance with E.O. 13166, Improving Access to Services for Persons with Limited English Proficiency, those people with disabilities who are limited English proficient and seek translation services for this meeting should notify NCD at least two weeks before this meeting.

Dated: February 7, 2006.

Ethel D. Briggs,

Executive Director.

[FR Doc. 06–1447 Filed 2–13–06; 11:18 am]

BILLING CODE 6820–MA–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting; Notice of Change in Subject of Meeting

The National Credit Union Administration Board determined that its business required the addition of the following item to the previously announced closed meeting (**Federal Register**, Vol. 71, No. 29, page 7592, February 13, 2006) scheduled for Thursday, February 16, 2006.

One (1) Personal Matter: Closed pursuant to Exemptions (2) and (6).

The Board voted unanimously that agency business required that this item be added to the closed agenda. Earlier announcement of this change was not possible.

The previously announced items were:

1. Administrative Action under Section 206(h)(1)(A) of the Federal Credit Union Act. Closed pursuant to Exemptions (8), (9)(A)(ii), and (9)(B).

2. Request from a Corporate Federal Credit Union to Amend its Existing Waiver under Part 704 of NCUA's Rules and Regulations. Closed pursuant to Exemption (8).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone (703) 518–6304.

Mary Rupp,

Secretary of the Board.

[FR Doc. 06–1454 Filed 2–13–06; 1:07 pm]

BILLING CODE 7535–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services; Sunshine Act Meeting of the National Museum and Library Services Board

AGENCY: Institute of Museum and Library Services (IMLS), NFAH.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of the forthcoming meeting of the National Museum and Library Services Board. This notice also describes the function of the Board. Notice of the meeting is required under the Sunshine in Government Act.

TIME AND DATE: Monday, March 6, 2006 from 2 p.m. to 5 p.m.

AGENDA: Committee Meetings of the Seventh National Museum and Library Service Board Meeting:

2 p.m.–3:15 p.m. Executive Session (Closed to the Public)

3:30 p.m.–5 p.m. Committee Partnerships and Government Affairs
(Open to the Public)
I. Staff Reports
II. Other Business

3:30 p.m.–5 p.m. Policy and Planning Committee
(Open to the Public)
I. Staff Reports
II. Other Business

PLACE: The meeting will be held at the Institute of Museum and Library Services. 1800 M Street, NW., 9th Floor, Washington, DC 20036. Telephone: (202) 653–4676.

TIME AND DATE: Tuesday, March 7, 2006, from 9 a.m. to 1 p.m.

AGENDA: Seventh National Museum and Library Services Board Meeting:

(Open to the Public)
I. Welcome
II. Approval of Minutes
III. Program Reports
IV. Committee Reports
V. Board Program: Heritage Health Index
VI. Other Business
VII. Adjournment

PLACE: The meeting will be held at the Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036. Telephone: (202) 653–4676.

STATUS: Parts of this meeting will be closed to the public as identified in the meeting agenda and supplementary information. The rest of the meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lyons, Special Assistant to the Director, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036. Telephone: (202) 653–4676.

SUPPLEMENTARY INFORMATION: The National Museum and Library Services Board is established under the Museum and Library Services Act, 20 U.S.C. 9101 *et seq.* The Board advises the Director of the Institute on general policies with respect to the duties, powers, and

authorities related to Museum and Library Services. The Executive Session of the Meeting from 2 p.m. to 3:15 p.m. on Monday, March 6, 2006 will be closed pursuant to subsections (c)(4) and (c)(9) of section 552b of Title 5, United States Code because the Board will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; and information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. The meetings from 3:30 p.m. until 5 p.m. Monday, March 6, 2006 and the meeting from 9 a.m. to 1 p.m. on Tuesday, March 7, 2006 are open to the public. If you need special accommodations due to a disability, please contact: Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. Telephone: (202) 653–4676; TDD (202) 653–4699 at least seven (7) days prior to the meeting date.

Dated: February 13, 2006.

Teresa LaHaie,

Director of Administration and Budget.

[FR Doc. 06–1456 Filed 2–13–06; 1:07 pm]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

Grid Reliability and the Impact on Plant Risk and the Operability of Offsite Power

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued Generic Letter (GL) 2006–02 to all holders of operating licenses for nuclear power reactors, except those who have permanently ceased operation and have certified that fuel has been removed from the reactor vessel. The NRC is issuing this generic letter to determine if compliance is being maintained with NRC regulatory requirements governing electric power sources and associated personnel training for your plant, the NRC is issuing this GL to obtain information from its licensees regarding:

1. Use of protocols between the nuclear power plant (NPP) and the transmission system operator (TSO), independent system operator (ISO), or reliability coordinator/authority (RC/RA) and the use of transmission load flow analysis tools (analysis tools) by TSOs to assist NPPs in monitoring grid conditions to determine the operability of offsite power systems under plant technical specifications. (The TSO, ISO, or RA/RC is responsible for preserving the reliability of the local transmission system. In this GL the term TSO is used to denote these entities);

2. Use of NPP/TSO protocols and analysis tools by TSOs to assist NPPs in monitoring grid conditions for consideration in maintenance risk assessments;

3. Offsite power restoration procedures in accordance with Section 2 of NRC Regulatory Guide (RG) 1.155, ''Station Blackout'';

4. Losses of offsite power caused by grid failures at a frequency equal to or greater than once in 20 site-years in accordance with RG 1.155, and

5. Require addressees to provide a written response to the NRC in accordance with 10 CFR 50.54(f).

This **Federal Register** notice is available through the NRC's Agencywide Documents Access and Management System (ADAMS) under accession number ML060380343.

DATES: The GL was issued on February 1, 2006.

ADDRESSES: Not applicable.

FOR FURTHER INFORMATION, CONTACT: Paul Gill at 301–415–3316 or by e-mail *asg@nrc.gov* or Matthew W. McConnell at 301–415–1597 or e-mail *mxm4@nrc.gov.*

SUPPLEMENTARY INFORMATION: NRC GL 2006–02 may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR) at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* The ADAMS number for the GL is ML060180352.

If you do not have access to ADAMS or if you have problems in accessing the documents in ADAMS, contact the NRC PDR reference staff at 1–800–397–4209 or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 9th day of February 2006.

For the Nuclear Regulatory Commission.

Christopher I. Grimes,

Director, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. E6–2167 Filed 2–14–06; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in February 2006. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in March 2006.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users should call the Federal relay service by dialing 711 and ask for 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the ''required interest rate'') in determining a single-employer plan's variable-rate premium. The required interest rate is the ''applicable percentage'' (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the ''premium payment year''). (Although the Treasury Department has ceased issuing 30-year securities, the Internal Revenue Service announces a surrogate yield figure each month—based on the 30-year Treasury bond maturing in February 2031—which the PBGC uses to determine the required interest rate.) The required interest rate to be used in determining variable-rate premiums for

premium payment years beginning in February 2006 is 3.90 percent (*i.e.*, 85 percent of the 4.59 percent Treasury Securities Rate for January 2006).

The Pension Funding Equity Act of 2004 (''PFEA'')—under which the required interest rate is 85 percent of the annual rate of interest determined by the Secretary of the Treasury on amounts invested conservatively in long-term investment grade corporate bonds for the month preceding the beginning of the plan year for which premiums are being paid—applies only for premium payment years beginning in 2004 or 2005. Congress is considering legislation that would extend the PFEA rate for one more year. If legislation that changes the rules for determining the required interest rate for plan years beginning in February 2006 is adopted, the PBGC will promptly publish a **Federal Register** notice with the new rate.

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between March 2005 and February 2006.

For premium payment years beginning in:	The required interest rate is:
March 2005	4.56
April 2005	4.78
May 2005	4.72
June 2005	4.60
July 2005	4.47
August 2005	4.56
September 2005	4.61
October 2005	4.62
November 2005	4.83
December 2005	4.91
January 2006	3.95
February 2006	3.90

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in March 2006 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 8th day of February 2006.

Vincent K. Snowbarger,

Deputy Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. E6–2098 Filed 2–14–06; 8:45 am]

BILLING CODE 7709–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Form 12b–25; SEC File No. 270–71; OMB Control No. 3235–0058

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget the request for extension of the previously approved collection of information discussed below.

The purpose of Form 12b–25 under the Securities Exchange Act of 1934 is to provide notice to the Commission and the marketplace that a public company will be unable to timely file a required periodic report. If all filing conditions are met, the company is granted an automatic filing extension. The information required is filed on occasion and is mandatory. All information is provided to the public for review. Publicly held companies file Form 12b–25. Approximately 7,799 issuers fileForm 12b–25 and it takes approximately 2.5 hours per response for a total of 19,498 burden hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; or an e-mail to *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: February 6, 2006

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–2099 Filed 2–14–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 24b–1; SEC File No. 270–205; OMB Control No. 3235–0194.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 24b–1 (17 CFR 240.24b–1) under the Securities Exchange Act of 1934 requires a national securities exchange to keep and make available for public inspection a copy of its registration statement and exhibits filed with the Commission, along with any amendments thereto.

There are eight national securities exchanges that spend approximately one half hour each complying with this rule, for an aggregate total compliance burden of four hours per year. The staff estimates that the average cost per respondent is $57.68 per year, calculated as the costs of copying ($12.36) plus storage ($45.32), resulting in a total cost of compliance for the respondents of $461.44.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the estimated burden hours should be directed to (i) the Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Building, Washington, DC 20503, or by sending an email to: *David_Rostker@omb.eop.gov;* and (ii) R.

Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

Dated: February 7, 2006.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–2100 Filed 2–14–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Rule 15Aj–1; SEC File No. 270–25; OMB Control No. 3235–0044.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Rule 15Aj–1 implements the requirements of Sections 15A, 17, and 19 of the Securities Exchange Act of 1934 by requiring every association registered as, or applying for registration as, a national securities association or as an affiliated securities association to keep its registration statement up-to-date by making periodic filings with the Commission on Form X–15AJ–1 and Form X–15AJ–2.

Rule 15Aj–1 requires a securities association to promptly notify the Commission after the discovery of any inaccuracy in its registration statement or in any amendment or supplement thereto by filing an amendment to its registration statement on Form X–15AJ–1 correcting such inaccuracy. The Rule also requires an association to promptly notify the Commission of any change which renders no longer accurate any information contained or incorporated in its registration statement or in any amendment or supplement thereto by filing a current supplement on Form X–15AJ–1. Rule 15A–1 further requires an association to file each year with the Commission an annual consolidated supplement on Form X–15AJ–2.

The information required by Rule 15Aj–1 and Forms X–15AJ–1 and X–15AJ–2 is intended to enable the Commission to carry out its statutorily mandated oversight functions and to assure that registered securities associations are in compliance with the Act. This information is also made available to members of the public. Without the requirements imposed by the Rule, the Commission would be unable to fulfill its regulatory responsibilities.

There is presently only one registered securities association, which registered in 1939, subject to the Rule. The burdens associated with Rule 15Aj–1 requirements have been borne by only one securities association since Rule 15Aj–1 was adopted. Furthermore, the burdens associated with Rule 15Aj–1 vary depending on whether amendments and current supplements are filed on Form X–15AJ–1 in addition to an annual consolidated supplement filed on Form X–15AJ–2. The Commission staff estimates the burden hours necessary to comply with the Rule by filing an amendment or a current supplement on Form X–15AJ–1 to be approximately one-half hour, with a related cost of $11, per response. The Commission staff estimates the burden hours necessary to comply with the Rule by filing an annual consolidated supplement on Form X–15AJ–2 to be approximately three hours, with a related cost of $90. Therefore, the Commission staff estimates that the total annual related reporting cost associated with the Rule to be upwards of $90, assuming a minimum filing of an annual consolidated statement on Form X–15AJ–2, with additional filings on Form X–15AJ–1 correspondingly increasing such reporting cost.

Compliance with Rule 15Aj–1 is mandatory. Information received in response to Rule 15Aj–1 shall not be kept confidential; the information collected is public information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to (i) the Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

Dated: February 7, 2006.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–2101 Filed 2–14–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Rule 31a–1; SEC File No. 270–173; OMB Control No. 3235–0178.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520], the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Rule 31a–1 [17 CFR 270.31a–1] under the Investment Company Act of 1940 (the ''Act'') is entitled ''Records to be maintained by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.'' Rule 31a–1 requires registered investment companies (''funds''), and every underwriter, broker, dealer, or investment adviser that is a majority-owned subsidiary of a fund, to maintain and keep current accounts, books, and other documents which constitute the record forming the basis for financial statements required to be filed pursuant to section 31 of the Act [15 U.S.C. 80a–30] and of the auditor's certificates relating thereto. The rule lists specific records to be maintained by funds. The rule also requires certain underwriters, brokers, dealers, depositors, and investment advisers to maintain the records that they are required to maintain under federal securities laws. The Commission periodically inspects the operations of funds to insure their compliance with the provisions of the Act and the rules thereunder. The books and records required to be maintained by rule 31a–1 constitute a major focus of the Commission's inspection program.

There are approximately 4300 investment companies registered with the Commission, all of which are required to comply with rule 31a–1. For purposes of determining the burden imposed by rule 31a–1, the Commission staff estimates that each fund is divided into approximately four series, on average, and that each series is required to comply with the recordkeeping requirements of rule 31a–1. Based on conversations with fund representatives, it is estimated that rule 31a–1 imposes an average burden of approximately 1500 hours annually per series for a total of 6000 annual hours per fund. The estimated total annual burden for all 4300 investment companies subject to the rule therefore is approximately 25,800,000 hours. Based on conversations with fund representatives, however, the Commission staff estimates that even absent the requirements of rule 31a–1, 90 percent of the records created pursuant to the rule are the type that generally would be created as a matter of normal business custom and to prepare financial statements.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study. The collection of information required by rule 31a–1 is mandatory. Responses will not be kept confidential. The records required by rule 31a–1 are required to be preserved pursuant to rule 31a–2 under the Investment Company Act [17 CFR 270.31a–2]. Rule 31a–2 requires that certain of these records be preserved permanently, and that others be preserved six years from the end of the fiscal year in which any transaction occurred. In both cases, the records should be kept in an easily accessible place for the first two years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: February 6, 2006.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–2102 Filed 2–14–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53250; File No. S7–24–89]

Joint Industry Plan; Order Granting Approval of Category 1 Changes From Amendment No. 13 of the Reporting Plan for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, Submitted by the Pacific Exchange, Inc., the National Association of Securities Dealers, Inc., the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc., the National Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

February 7, 2006.

I. Introduction and Description

On May 31, 2002, the National Stock Exchange, Inc. (''NSX''),[1] on behalf of itself and the National Association of Securities Dealers, Inc. (''NASD''), the American Stock Exchange LLC (''Amex''), the Boston Stock Exchange, Inc. (''BSE''), the Chicago Stock Exchange, Inc. (''CHX''), the Pacific Exchange, Inc. (''PCX''), and the Philadelphia Stock Exchange, Inc. (''Phlx'') (hereinafter referred to collectively as ''Participants''),[2] as members of the Operating Committee of the Plan submitted to the Securities and Exchange Commission (''Commission'') a proposal to amend the Plan, pursuant to Rule 608[3] under the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''). The proposal represents the 13th amendment (''13th Amendment'') made to the Plan. Notice of the proposed 13th Amendment was published in the **Federal Register** on July 5, 2002.[4]

The Nasdaq UTP Plan governs the collection, processing, and dissemination on a consolidated basis of quotation and last sale information for each of its Participants. This consolidated information informs investors of the current quotation and recent trade prices of The Nasdaq Stock Market, Inc. (''Nasdaq'') securities. It enables investors to ascertain from one data source the current prices in all the markets trading Nasdaq securities. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading Nasdaq securities.

As discussed in the 13th Amendment Notice, proposed amendments to the Plan have been segregated into four categories: (1) Category 1, ''Effective Upon Nasdaq's Exchange Registration;'' (2) Category 2, ''Effective Upon Launch of the Internal SIP;'' (3) Category 3, ''Effective Upon End of Parallel Period—Elimination of the Legacy SIP;'' and (4) Category 4, ''Timing Not An Issue.'' The amendments detailed in Category 2 were granted summary effectiveness through the 13th Amendment Notice so as to allow the target launch date for the new Internal Securities Information Processor (''SIP'') data feeds to be met.[5] In addition, the Commission granted partial temporary approval to the 13th Amendment with respect to extension of the expiration date of the Plan itself. The partial temporary approval extended the expiration date of the Plan through August 19, 2003.[6] The Commission then granted approval to the amendments detailed in Categories 2, 3, and 4 on a pilot basis.[7] However, the order approving parts 2, 3, and 4 of Amendment 13 noted specifically that it did not approve those amendments detailed in Category 1 because the Commission intended to address those amendments detailed in Category 1 through separate action when the Commission acted on the Nasdaq exchange registration application.[8]

[1] At the time Amendment No. 13 was submitted, the NSX was known as the Cincinnati Stock Exchange, Inc (''CSE''). The Commission notes that the CSE changed its name to the National Stock Exchange, Inc. *See* Securities Exchange Act Release No. 48774 (November 12, 2003), 68 FR 65332 (November 19, 2003) (File No. SR–CSE–2003–12).

[2] At the time of submission, NSX was the chair of the operating committee (''Operating Committee'' or ''Committee'') for the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis (''Nasdaq UTP Plan'' or ''Plan'') by the Participants. PCX is the current chair of the Operating Committee.

[3] 17 CFR 202.608.

[4] *See* Securities Exchange Act Release No. 46139 (June 28, 2001 [sic]), 67 FR 44888 (''13th Amendment Notice'').

[5] The summary effectiveness expired on October 26, 2002.

[6] *See* Securities Exchange Act Release No. 46381 (August 19, 2002), 67 FR 54687 (August 23, 2002) (''Date Extension Approval Order'').

[7] *See* Securities Exchange Act Release No. 46729 (October 25, 2002), 67 FR 66685 (November 1, 2002).

[8] Pursuant to Rule 608(b)(2), 17 CFR 242.608(b)(2), the Commission must take action within 120 days of the date of publication of notice of filing of amendment in the **Federal Register**

Continued

Now that the Nasdaq exchange registration application has been approved,[9] the Commission is approving the amendments detailed in Category 1 of Amendment 13, as published in the **Federal Register**.[10]

The Commission received one comment letter on the 13th Amendment from BrokerageAmerica (''BA'').[11] However, this comment letter discussed changes proposed in Categories 2, 3, and 4 of Amendment 13, and the comment letter was discussed fully in the Partial Temporary Approval of Amendment No. 13.[12]

The Commission finds that the Category 1 changes included in the 13th Amendment are consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, Section 12(f)[13] and Section 11A(a)(1)[14] of the Act and Rules 601 and 608 thereunder.[15] Section 11A of the Act directs the Commission to facilitate the development of a national market system for securities, ''having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets,'' and cites as an objective of that system ''fair competition * * * between exchange markets and markets other than exchange markets.''[16] When the Commission first approved the Plan on a pilot basis, it found that the Plan ''should enhance market efficiency and fair competition, avoid investor confusion, and facilitate surveillance of concurrent exchange and OTC trading.''[17] The Commission believes that amending the Plan to incorporate the amendments detailed in Category 1 of Amendment 13 furthers these goals.

It is therefore ordered, pursuant to Sections 12(f) and 11A of the Act[18] and paragraph (b)(4) of Rule 608 thereunder,[19] that the operation of the Plan, as modified by the amendments detailed in Category 1 of Amendment 13 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–2108 Filed 2–14–06; 8:45 am]

BILLING CODE 8010–01–P

unless the sponsors of such amendment consent to an extension. The sponsors of the 13th Amendment consented to final action on the Category 1 amendments being contingent upon a subsequent trigger event. *See* letter from Jeffrey T. Brown, Chairman, Operating Committee, to Jonathan G. Katz, Secretary, Commission, dated May 30, 2002 (''13th Amendment Filing'').

[9] *See* Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

[10] *See supra* note 4, 13th Amendment Notice.

[11] *See* letter from Sam Guidetti, Senior Vice President & Chief Compliance Officer, BrokerageAmerica, to Jonathan Katz, Secretary, Commission, dated September 17, 2002.

[12] *See supra* note 7.

[13] 15 U.S.C. 78*l*(f). The Commission finds that extending the Plan is consistent with fair and orderly markets, the protection of investors and the public interest, and otherwise in furtherance of the purposes of the Act. The Commission has taken into account the public trading activity in securities traded pursuant to the Plan, the character of the trading, the impact of the trading of such securities on existing markets, and the desirability of removing impediments to, and the progress that has been made toward the development of a national market system.

[14] 15 U.S.C. 78k–1(a)(1).

[15] 17 CFR 242.601 and 17 CFR 242.608.

[16] 15 U.S.C. 78k–1(a).

[17] *See* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990).

[18] 15 U.S.C. 78(f) and 15 U.S.C. 78k–1.

[19] 17 CFR 242.608(b)(4).

[20] 17 CFR 200.30–3(a)(27).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53244; File No. SR–Amex–2006–003]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto To Adjust the Close of Normal Trading Hours in Equity Options and Narrow-Based Index Options

February 7, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 5, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Amex. On January 31, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to approve the amended proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Exchange Rules 1, 918—ANTE, 936C—ANTE and 903C to adjust the close of normal trading hours in equity options and options based on stock index industry groups (''narrow-based index options'') from 4:02 p.m. eastern time (''e.t.'') to 4 p.m. e.t. The Exchange proposes that these changes be implemented on February 13, 2006.[4] The text of the proposed rule change, as amended, is available on the Amex's Web site at (*http://www.amex.com*), at the Amex's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

According to the Exchange, the purpose of the proposed rule change, as amended, is to amend the Amex's rules to conform to an industry-wide consensus to change the close of trading hours for equity options and narrow-based index options from 4:02 p.m. e.t. to 4 p.m. e.t. After the change, the time of the close of trading in these Amex options will correspond to the normal time set for the close of trading on the primary exchanges listing the stocks underlying the Amex options. The primary exchanges generally close at 4 p.m. e.t.

The Exchange notes that, on May 14, 1997, the Amex received approval to move the close of equity options trading from 4:10 p.m. to 4:02 p.m.[5] The change was prompted by improvements in the dissemination of closing prices in the underlying securities, the limited ability of public customers to reach as quickly as professional traders news announcements in the last ten minutes of trading, and the difficulties experienced by options specialists and

[1] 15 U.S.C 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange requested that the implementation date for the new closing time be changed from February 1, 2006, as was originally proposed, to February 13, 2006.

[4] *Id.*

[5] *See* Securities Exchange Act Release No. 38640 (May 14, 1997), 62 FR 28081 (May 22, 1997). According to the Exchange, from 1978 through 1997, equity options were traded until 4:10 p.m. to allow investors to trade options based upon the final closing prices of the underlying securities.

registered options traders to make orderly markets without the ability to hedge or otherwise offset market risk with transactions in the underlying stock.

The rationale to continue trading options for a period of time after the close of trading on the primary markets for the underlying securities was that the extended time period allowed options traders to respond to later reports of closing prices over the consolidated tape. If the price of a late reported trade on an underlying security was substantially different from the previous reported price, the extended trading session would give options traders the opportunity to bring options quotes in line with the closing price of the underlying security.

However, the Exchange submits that because of technological advances in the processing and reporting of transactions, this two minute time period is no longer necessary to trade options after the underlying securities close trading. Additionally, price aberrations can occur if an option is traded when the underlying stock is no longer trading, since there is a close relationship in the price of the underlying stock and the overlying options. As a result, it is difficult for the market to price options accurately when the underlying security is not trading.

The Exchange also proposes to change the closing time for narrow-based index options, as defined in Amex Rule 900C, because such indexes are subject to the same pricing problems as options on individual stocks. A significant news announcement on one component of a narrow-based index could have a significant effect on that index. The Exchange is not at this time proposing to change the closing time of 4:15 p.m. for options on a broad-based index, as defined in Amex Rule 900C, because it is unlikely that a significant news announcement by the issuer on one component stock of a broad-based index is likely to have a significant effect on the price of that broad-based index.

The Exchange notes that all options exchanges have determined to make similar uniform changes to their rules, to modify the closing time in equity options and narrow-based index options from 4:02 p.m. e.t. to 4 p.m. e.t. on a coordinated basis. These industry-wide changes are proposed to be effective on February 13, 2006.[6]

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act[7] in general, and furthers the objectives of section 6(b)(5) of the Act[8] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change, as amended.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form at *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2006–003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2006–003. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2006–003 and should be submitted on or before March 8, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the Exchange believes that the need to continue trading options for some period of time after the close of trading in the underlying securities markets is no longer necessary because improvements in the processing and reporting of transactions have obviated

[6] *See* Amendment No. 1, *supra* note 3.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5). The statutory basis with which the Exchange believes that the proposed rule change is consistent has been corrected from Section 6(b)(4) of the Act to Section 6(b)(5) of the Act. Telephone conversation between Nyieri Nazarian, Assistant General Counsel, Amex, and Johnna B. Dumler, Attorney, Division of Market Regulation, Commission, on January 11, 2006.

[9] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

the need to respond to late reports of closing prices over the consolidated tape in order to bring options quotes in line with the closing price of the underlying security. Moreover, the Exchange believes that allowing two additional minutes of options trading after trading on the underlying primary exchanges has ended may actually result in pricing aberrations. Because the two minute delay between the close of normal trading in equity options and narrow-based index options and the corresponding underlying equity markets is no longer necessary, the Commission believes that eliminating the delay is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets. Therefore, the Commission finds that it is consistent with the Act for the Exchange to amend its rules to change the close of normal trading hours in equity and narrow-based index options from 4:02 p.m. (e.t.) to 4 p.m. (e.t).

The Commission finds good cause for approving this proposed rule change, as amended, before the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission notes that all of the options exchanges have filed substantially similar proposals and seek to implement these industry-wide changes simultaneously on February 13, 2006.[11] For example, on December 20, 2005, the Commission published for comment in the **Federal Register** a similar proposed rule change submitted by the Chicago Board Options Exchange, Incorporated (''CBOE'').[12] The Commission received no comments on the CBOE's proposed rule change. The Commission believes that the Amex's proposed rule change, as amended, raises no new issues or novel regulatory questions. Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,[13] for approving the proposed rule change, as amended, prior to the thirtieth day after publication in the **Federal Register**. In addition, because the existence of dissimilar closing times among the options exchanges could lead to confusion for options investors and broker-dealers, the Commission finds good cause to accelerate approval of the proposed rule change, as amended, to enable the six options exchanges to simultaneously amend their hours of trading on an industry-wide basis in a uniform manner.[14]

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[15] that the proposed rule change and Amendment No. 1 thereto (SR–Amex–2006–003) be, and hereby are, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–2109 Filed 2–14–06; 8:45 am]

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[11] *See* note 14, *infra.*

[12] *See* Securities Exchange Act Release No. 52949 (December 13, 2005), 70 FR 75513 (December 20, 2005) (SR–CBOE–2005–104). *See also* Securities Exchange Act Release No. 53055 (January 5, 2006), 71 FR 2279 (January 13, 2006) (SR–ISE–2005–58).

[13] 15 U.S.C. 78s(b)(2).

[14] The Commission notes that it is simultaneously approving similar proposals from the other options exchanges. *See* Securities Exchange Act Release Nos. 53245 (SR–BSE–2006–02); 53446 (SR–CBOE–2005–104); 53248 (SR–ISE–2005–58); 53249 (SR–PCX–2005–138); and 53247 (SR–Phlx–2006–01) (February 7, 2006).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53245; File No. SR–BSE–2006–02]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto To Amend and Clarify Its Rules Governing the Hours of Trading on the Boston Options Exchange

February 7, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 11, 2006, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the BSE. On February 2, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to approve the amended proposal on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange requested that the implementation date for the new closing time be changed from February 1, 2006, as was originally proposed, to February 13, 2006.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to amend and clarify its rules governing its hours of trading on the Boston Options Exchange (''BOX''). The Exchange proposes that these changes be implemented on February 13, 2006.[4] The text of the proposed rule change, as amended, is available on the BSE's Web site (*http://www.bostonstock.com*), at the principal office of the BSE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

According to the Exchange, the purpose of the proposed rule change, as amended, is to amend and clarify its rules with respect to the hours of trading on BOX. Currently, Chapter V, Section 3(a) of BOX's rules states that the Boston Options Exchange Regulation LLC (''BOXR'') Board shall determine the days BOX shall be open for options business and the hours of such days during which options transactions may be made on BOX. When BOX launched trading in February of 2004, the BOXR Board set the closing time for the hours of business for options trading on individual stocks at 4:02 p.m. e.s.t. to conform to the business hours of the other five options exchanges.[5] It is the BSE's understanding that all of the options exchanges collectively have determined to change their rules to adjust the closing time in options on individual stocks from 4:02 p.m. e.s.t. to

[4] *Id.*

[5] According to the Exchange, the BOXR Board has also set the hours of business for options on Fund Shares, as defined in Chapter 4, Section 3(i) of BOX Rules, to be 4:15 p.m. e.s.t.

4 p.m. e.s.t on February 13, 2006.[6] The BOXR Board intends to pass a resolution to change the hours of business for options trading on individual stocks to be 4 p.m. e.s.t., effective on February 13, 2006.[7]

According to the Exchange, the options exchanges propose to change their respective hours of business because: (1) The initial rationale to continue trading options for some limited period of time after the underlying market close period (which allowed options traders to respond to late reports of closing prices over the consolidated tape) is no longer necessary due to improvements in the processing and reporting of transactions, and (2) it is difficult for the market to price options when the underlying security is not trading.

Chapter V, Section 3(b) of BOX's rules further states that transactions may be effected in an options class on BOX until two (2) minutes after the primary market on which the underlying security trades closes for trading. The Exchange proposes to eliminate this additional language for clarification purposes. By eliminating this reference that transactions may be effected on BOX until two minutes after the underlying primary market, the Exchange believes it will eliminate any confusion as to BOX's hours of business for options on individual stocks.

The Exchange notes that if it were to unilaterally modify its closing time, the existence of dissimilar closing times applicable to the different options exchanges would likely lead to confusion for options investors and broker-dealers.

The Exchange also proposes to update its rules with respect to the closing time of Fund Shares on BOX. The BOXR Board has set the closing time of Fund Shares at 4:15 p.m. e.s.t., and Fund Shares will continue to close at that time. Currently, Chapter V, Section 3(b) of BOX Rules states that ''Notwithstanding the foregoing, transactions may be effected in options contracts overlying the Nasdaq 100 Index Trading Stock® on BOX until 4:15 p.m.'' [8] However, this sentence does not list all of the Fund Shares traded on BOX. This proposal would clarify that all Fund Shares may trade on BOX until 4:15 p.m. e.s.t. by using the defined term of Fund Shares, rather than listing specific options traded until 4:15 p.m. e.s.t.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Section 6(b)(5) of the Act [10] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The BSE does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change, as amended.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form at (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BSE–2006–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BSE–2006–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site(*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2006–02 and should be submitted on or before March 8, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[12] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in

[6] The Exchange represents that it is not currently trading options on narrow-based indexes, and thus is not proposing changes at this time related to the hours of trading for narrow-based index options. However, if the Exchange were to list options on narrow-based indexes, the Exchange will at that time make necessary changes regarding the closing time for options on narrow-based indexes. Telephone conversation between Bill Meehan, Assistant Vice President, Regulation & Compliance, BOX Regulation, and Cyndi N. Rodriguez, Special Counsel, Division of Market Regulation (''Division''), Commission, on February 6, 2006.

[7] *See* Amendment No. 1, *supra* note 3.

[8] Telephone conversation between Bill Meehan, Assistant Vice President, Regulation & Compliance, BOX Regulation, and Cyndi N. Rodriguez, Special Counsel, Division, Commission, on February 6, 2006 (correcting the reference to language contained in Chapter V, Section 3(b) of BOX Rules).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest.

The Commission notes that the Exchange believes that the need to continue trading options for some period of time after the close of trading in the underlying securities markets is no longer necessary because improvements in the processing and reporting of transactions have obviated the need to respond to late reports of closing prices over the consolidated tape in order to bring options quotes in line with the closing price of the underlying security. Because the two minute delay between the close of normal trading in equity options and the corresponding underlying equity markets is no longer necessary, the Commission believes that eliminating the delay is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets. Therefore, the Commission finds that it is consistent with the Act for the Exchange to amend and clarify its rules governing the hours of trading of options on individual stocks on BOX from 4:02 p.m. (e.s.t.) to 4 p.m. (e.s.t.).

The Commission finds good cause for approving this proposed rule change, as amended, before the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission notes that all of the options exchanges have filed substantially similar proposals and seek to implement these industry-wide changes simultaneously on February 13, 2006.[13] For example, on December 20, 2005, the Commission published for comment in the **Federal Register** a similar proposed rule change submitted by the Chicago Board Options Exchange, Incorporated (''CBOE'').[14] The Commission received no comments on the CBOE's proposed rule change. The Commission believes that the BSE's proposed rule change, as amended, raises no new issues or novel regulatory questions. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[15] for approving the proposed rule change, as amended, prior to the thirtieth day after publication in the **Federal Register**. In addition, because the existence of dissimilar closing times among the options exchanges could lead to confusion for options investors and broker-dealers, the Commission finds good cause to accelerate approval of the proposed rule change, as amended, to enable the six options exchanges to simultaneously amend their hours of trading on an industry-wide basis in a uniform manner.[16]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change and Amendment No. 1 thereto (SR–BSE–2006–02) be, and hereby are, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–2113 Filed 2–14–06; 8:45 am]

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[13] *See* note 16, *infra.*

[14] *See* Securities Exchange Act Release No. 52949 (December 13, 2005), 70 FR 75513 (December 20, 2005) (SR–CBOE–2005–104). *See also* Securities Exchange Act Release No. 53055 (January 5, 2006), 71 FR 2279 (January 13, 2006) (SR–ISE–2005–58).

[15] 15 U.S.C. 78s(b)(2).

[16] The Commission notes that it is simultaneously approving similar proposals from the other options exchanges. *See* Securities Exchange Act Release Nos. 53244 (SR–Amex–2006–003); 53246 (SR–CBOE–2005–104); 53248 (SR–ISE–2005–58); 53249 (SR–PCX–2005–138); and 53247 (SR–Phlx–2006–01) (February 7, 2006).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53252; File No. SR-CBOE–2006–05]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Duration of the SizeQuote Mechanism Pilot

February 8, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 30, 2006, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot in CBOE Rule 6.74(f) pertaining to the SizeQuote Mechanism, which is a process by which a Floor Broker may execute and facilitate large-sized orders in open outcry. The Exchange is proposing to extend the pilot program, which would otherwise expire on February 15, 2006, through February 15, 2007. No other changes are being made to the pilot program through this rule filing.[5] The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE Rule 6.74(f), which relates to the open outcry ''SizeQuote'' Mechanism, was approved on a pilot basis in February 2005; was recently expanded, in January 2006, to include solicited orders; and will expire on February 15, 2006.[6] This pilot program

[5] A separate rule change proposal has been filed and is currently pending with the Commission that would make amendments to the SizeQuote Mechanism. *See* SR–CBOE–2005–115 (proposal to modify the pilot program in various respects, including to permit a Floor Broker to execute the entire SizeQuote Order at a price at least one trading increment better than the best price communicated by the in-crowd market participants (''ICMPs'') in their responses to the SizeQuote request).

[6] *See* Securities Exchange Act Release Nos. 51205 (February 15, 2005), 70 FR 8647 (February 22, 2005) (approving SR–CBOE–2004–72 on a pilot basis through February 15, 2006) and 53135 (January 17, 2006), 71 FR 3908 (January 24, 2006) (approving SR-CBOE–2005–83, which modified the pilot program to enable a Floor Broker to execute a SizeQuote Order with either a Floor Broker's facilitation order, one or more solicited orders, or a combination of the Floor Broker's facilitation order and such solicited order(s)).

provides a process by which a Floor Broker, using his or her exercise of due diligence to execute orders at the best price(s), may execute and facilitate large-sized orders in open outcry. Under the pilot program, the ICMPs have priority to trade a SizeQuote Order at the best price communicated by the ICMPs in their response to a Floor Broker's SizeQuote request and at one increment better, while a Floor Broker can execute the entire SizeQuote Order with a facilitation order, one or more solicited orders, or a combination of solicited and facilitation orders at a price two trading increments better than the best price provided by the ICMPs in their response to the SizeQuote request. For purposes of the pilot program, the minimum qualifying order size is 250 contracts [7] and Floor Brokers must stand ready to facilitate the entire size of the order for which they request SizeQuotes.

The instant proposed rule change seeks to extend the existing pilot program, which would otherwise expire on February 15, 2006, through February 15, 2007. The Exchange notes that, as part of the original pilot program approval order,[8] the Exchange represented that it would provide the Commission a report at the end of the initial pilot period summarizing the effectiveness of the SizeQuote program. In that regard, though the SizeQuote Mechanism has been made available during the pilot period in all equity option classes traded on the Exchange for orders of 250 contracts or more, Floor Brokers have not generally availed themselves of the SizeQuote Mechanism to facilitate large-sized orders.[9] However, the Exchange continues to believe that the SizeQuote Mechanism enhances ICMPs' ability and incentive to quote competitively and participate in open outcry trades while at the same time creates a process that gives greater certainty to Floor Brokers in the execution of large orders in that ICMPs only have one opportunity to respond with a quote response (which further enhances an ICMP's incentive to quote competitively). The Exchange is therefore seeking to extend the existing pilot program, including the amendment made thereto pursuant to SR–CBOE–2005–83,[10] for another year, through February 15, 2007, in order to continue its evaluation of the utility of the SizeQuote Mechanism.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act [11] in general and furthers the objectives of section 6(b)(5) of the Act [12] in particular in that it is designed to promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change, as amended, does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14] At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

A proposed rule change filed under section 19b–4(f)(6) normally may not become operative prior to 30 days after the date of its filing.[15] Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[16] CBOE has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest so that the pilot program may continue until February 15, 2007 without interruption.[17]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2006–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2006–05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

[7] The appropriate Exchange committee determines the classes in which SizeQuote operates and may vary the minimum qualifying order size, provided that such number may not be less than 250 contracts.

[8] *See* note 6, *supra.*

[9] The Exchange believes the SizeQuote Mechanism has not been actively utilized due to some of the limitations and risks inherent in the original design of the pilot program. Thus, apart from the instant proposal to extend the pilot period, CBOE recently expanded the pilot program to include solicited orders. Originally the pilot program only applied to facilitation orders. *See* note 6, *supra,* and accompanying text. CBOE has also proposed to modify the pilot program in various other respects. *See* note 5, *supra.*

[10] *See* note 6, *supra.*

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

Pursuant to Rule 19b–4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange provided notice of the filing at least five business days prior to the date of filing.

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] *Id.*

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2006–05 and should be submitted on or before March 8, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–2111 Filed 2–14–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53246; File No. SR–CBOE–2005–104]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Thereto To Amend Its Rules Governing the Hours of Trading in Equity Options and Narrow-Based Index Options

February 7, 2006.

I. Introduction

On December 6, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules governing the hours of trading in equity options and narrow-based index options. The proposed rule change was published for comment in the **Federal Register** on December 20, 2005. The Commission received no comments on the proposed rule change. On January 31, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] This order approves the proposed rule change, grants accelerated approval to Amendment No. 1 to the proposed rule change, and solicits comments from interested persons on Amendment No. 1.

II. Description

The CBOE proposes to amend its rules governing the hours of trading in equity options and narrow-based index options. Specifically, the CBOE proposes to amend its rules to change the close of the normal trading hours in equity options and in narrow-based index options from 3:02 p.m. (Chicago time) to 3 p.m. (Chicago time). After the change, the time of the close of trading in these CBOE options will correspond to the normal time set for the close of trading on the primary exchanges listing the stocks underlying the CBOE options. The primary exchanges generally close at 3 p.m. (Chicago time).

The Exchange represents that improvements in the processing and reporting of transactions have largely eliminated significant delays in the reporting of closing prices; and therefore, a two minute session is no longer needed to trade options after the underlying securities close trading. Additionally, the Exchange believes that pricing aberrations can occur if an option is traded when the underlying stock is no longer trading, since there is a close relationship in the price of the underlying stock and the overlying option. As a result, the CBOE believes that it is difficult for the market to price options accurately when the underlying security is not trading. Furthermore, as noted above, the Exchange also proposes to change the closing time for narrow-based indexes (under CBOE Rule 24.6) because these indexes are subject to the same pricing problems as options on individual stocks. According to the CBOE, a significant news announcement on one component of a narrow-based index could have a significant effect on that index.

However, the Exchange is not at this time proposing to change the closing time of 3:15 p.m. (Chicago time) for broad-based index options because it does not believe that a significant news announcement by the issuer of one component stock of a broad-based index is likely to have a significant effect on the price of that broad-based index.

Accordingly, under the proposed rule change, as amended, the CBOE proposes to amend its rules, including CBOE Rules 6.1, 6.2, 12.3, 24.6, and 24.16, in which references are made to a 3:02 p.m. closing time for equity options and narrow-based index options. The CBOE proposes that the proposed rule change, as amended, be implemented on February 13, 2006.[4]

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form at (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2005–104 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-CBOE–2005–104. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site(*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–104 and

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange requested that the implementation date for the new closing time be changed from February 1, 2006, as was originally proposed, to February 13, 2006.

[4] *Id.*

should be submitted on or before March 8, 2006.

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[6] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the Exchange believes that the need to continue trading options for some period of time after the close of trading in the underlying securities markets is no longer necessary because improvements in the processing and reporting of transactions have obviated the need to respond to late reports of closing prices over the consolidated tape in order to bring options quotes in line with the closing price of the underlying security. Moreover, the Exchange believes that allowing two additional minutes of options trading after trading on the underlying primary exchanges has ended may actually result in pricing aberrations. Because the two minute delay between the close of normal trading in equity options and narrow-based index options and the corresponding underlying equity markets is no longer necessary, the Commission believes that eliminating the delay is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets. Therefore, the Commission finds that it is consistent with the Act for the Exchange to amend its rules to change the close of normal trading hours in equity and narrow-based index options from 3:02 p.m. (Chicago time) to 3 p.m. (Chicago time).

[5] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

Accelerated Approval of Amendment No. 1

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[7] for approving Amendment No.1 prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that all of the options exchanges have filed substantially similar proposals and seek to implement these industry-wide changes simultaneously on February 13, 2006.[8] Because the existence of dissimilar closing times among the options exchanges could lead to confusion for options investors and broker-dealers, the Commission finds it appropriate to accelerate approval of Amendment No. 1 to enable the six options exchanges to simultaneously amend their hours of trading on an industry-wide basis in a uniform manner.[9]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change and Amendment No. 1 thereto (SR–CBOE–2005–104) be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–2112 Filed 2–14–06; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78s(b)(2).

[8] *See* note 9, *infra.*

[9] The Commission notes that it is simultaneously approving similar proposals from the other options exchanges. *See* Securities Exchange Act Release Nos. 53244 (SR–Amex–2006–003); 53245 (SR–BSE–2006–02); 53248 (SR–ISE–2005–58); 53249 (SR–PCX–2005–138); and 53247 (SR–Phlx–2006–01) (February 7, 2006).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53248; File No. SR–ISE–2005–58]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto To Amend ISE Rule 700 Governing the Hours of Trading in Equity Options and Narrow-Based Index Options

February 7, 2006.

I. Introduction

On December 27, 2005, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules governing the hours of trading in equity options and narrow-based index options. The proposed rule change was published for comment in the **Federal Register** on January 13, 2006.[3] The Commission received no comments on the proposed rule change. On January 30, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission is approving the amended proposal on an accelerated basis.

II. Description

The ISE proposes to amend ISE Rule 700 governing the hours of trading in equity options and narrow-based index options. Specifically, the ISE proposes to amend ISE Rule 700 to change the close of the normal trading hours in options on individual stocks and narrow-based indexes from 4:02 p.m. to 4 p.m. (New York time). After the change, the time of the close of trading in these ISE options will correspond to the normal time set for the close of trading on the primary exchanges listing the stocks underlying the ISE options. The primary exchanges generally close at 4 p.m. (New York time).

The Exchange represents that improvements in the processing and reporting of transactions have largely eliminated significant delays in the reporting of closing prices; and therefore, a two minute session is no longer needed to trade options after the underlying securities close trading. Additionally, the Exchange believes that pricing aberrations can occur if an option is traded when the underlying stock is no longer trading, since there is a close relationship in the price of the underlying stock and the overlying option. As a result, the ISE believes that it is difficult for the market to price options accurately when the underlying security is not trading. Furthermore, as noted above, the Exchange proposes to change the closing time for options on narrow-based indexes, as defined in ISE Rule 2001, because these indexes are subject to the same pricing problems as options on individual stocks. According to the ISE, a significant news announcement on one component of a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 53055 (January 5, 2006), 71 FR 2279.

[4] In Amendment No. 1, the Exchange requested that the implementation date for the new closing time be changed from February 1, 2006, as was originally proposed, to February 13, 2006.

narrow-based index could have a significant effect on that index. However, the Exchange is not at this time proposing to change the closing time of 4:15 p.m. (New York time) for options on a broad-based index, as defined in ISE Rule 2001, because the ISE believes it is unlikely that a significant news announcement by the issuer of one component stock of a broad-based index is likely to have a significant effect on the price of that broad-based index. The Exchange proposes to implement the proposed rule change on February 13, 2006.[5]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[7] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the Exchange believes that the need to continue trading options for some period of time after the close of trading in the underlying securities markets is no longer necessary because improvements in the processing and reporting of transactions have obviated the need to respond to late reports of closing prices over the consolidated tape in order to bring options quotes in line with the closing price of the underlying security. Moreover, the Exchange believes that allowing two additional minutes of options trading after trading on the underlying primary exchanges has ended may actually result in pricing aberrations. Because the two minute delay between the close of normal trading in equity options and narrow-based index options and the corresponding underlying equity markets is no longer necessary, the Commission believes that eliminating the delay is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets. Therefore, the Commission finds that it is consistent with the Act for the Exchange to amend its rules to change the close of normal trading hours in equity and narrow-based index options from 4:02 p.m. to 4 p.m. (New York time).

The Commission finds good cause for approving this proposed rule change, as amended, before the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission notes that all of the options exchanges have filed substantially similar proposals and seek to implement these industry-wide changes simultaneously on February 13, 2006.[8] For example, on December 20, 2005, the Commission published for comment in the **Federal Register** a similar proposed rule change submitted by the Chicago Board Options Exchange, Incorporated (''CBOE'').[9] The Commission received no comments on the CBOE's proposed rule change. The Commission believes that the ISE's proposed rule change, as amended, raises no new issues or novel regulatory questions. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[10] for approving the proposed rule change, as amended, prior to the thirtieth day after publication in the **Federal Register**. In addition, because the existence of dissimilar closing times among the options exchanges could lead to confusion for options investors and broker-dealers, the Commission finds good cause to accelerate approval of the proposed rule change to enable the six options exchanges to simultaneously amend their hours of trading on an industry-wide basis in a uniform manner.[11]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change and Amendment No. 1 thereto (SR–ISE–2005–58) be, and hereby are, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–2114 Filed 2–14–06; 8:45 am]

BILLING CODE 8010–01–P

[5] *Id.*

[6] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* note 11, *infra.*

[9] *See* Securities Exchange Act Release No. 52949 (December 13, 2005), 70 FR 75513 (December 20, 2005) (SR–CBOE–2005–104).

[10] 15 U.S.C. 78s(b)(2).

[11] The Commission notes that it is simultaneously approving similar proposals from the other options exchanges. *See* Securities Exchange Act Release Nos. 53244 (SR–Amex–2006–003); 53245 (SR–BSE–2006–02); 53246 (SR–CBOE–2005–104); 53249 (SR–PCX–2005–138); and 53247 (SR–Phlx–2006–01) (February 7, 2006).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53255; File No. SR–NASD–2006–009]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of the Fee Pilot for National Quotation Data Service

February 8, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 24, 2006, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), submitted to the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the self-regulatory organization under section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to re-establish through December 29, 2006, a pilot program under NASD Rule 7010(h), which reduced from $50 to $10 the monthly fee that non-professional users pay to receive National Quotation Data Service (''NQDS''). Nasdaq is simultaneously filing a separate rule proposal to re-establish the same pilot program retroactively through September 1, 2005, the date the pilot inadvertently was permitted to lapse.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

The text of the proposed rule change is below. Additions are *italicized;* deletions are [bracketed].[5]

* * * * *

7010. System Services

(a)–(g) No Change.

(h) National Quotation Data Service (NQDS)

(1) Except as provided in subparagraph (2) of this section, the charge to be paid for each interrogation or display device receiving all or any portion of the information disseminated through the NQDS shall be $50.00 per month. The NQDS information that will be provided through service consists of individual market maker quotations, Nasdaq Level 1 Service and the Last Sale Information Service.

(2) *For a pilot period ending December 29, 2006*, [T]*t*he charge to be paid by a non-professional for each interrogation or display device receiving all or any portion of the NQDS information disseminated through an authorized vendor shall be $10.00 per month.

(3) A ''non-professional'' is a natural person who is neither:

(A) Registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association;

(B) Engaged as an ''investment adviser'' as that term defined in section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor

(C) Employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

(i)–(w) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to re-establish for one year the fee reduction pilot program under NASD Rule 7010(h) that reduced from $50 to $10 the monthly fee that non-professional users pay to receive NQDS.

NQDS delivers market maker quotations, Nasdaq Level 1[6] service (including calculation and display of the inside market), and last sale information that is dynamically updated on a real-time basis. NQDS data is used not only by firms, associated persons, and other market professionals, but also by non-professionals who receive the service through authorized vendors, including, for example, on-line brokerage firms. Prior to August 31, 2000, NQDS data was available through authorized vendors at a monthly rate of $50 for professional and non-professional users alike. In August 2000, the NASD through Nasdaq filed a rule change to reduce from $50 to $10 the monthly fee that non-professional users pay to receive NQDS data.[7] The Commission approved the pilot on August 22, 2000, and the fee reduction commenced on August 31, 2000 on a one-year pilot basis.[8] On September 5, 2001, August 29, 2002, August 15, 2003, and August 20, 2004, Nasdaq filed proposed rule changes to extend the pilot for additional one-year periods.[9]

Nasdaq has consistently supported broad, effective dissemination of market information to public investors. Thus, Nasdaq is proposing to re-establish the fee-reduction pilot for the remainder of 2006. The pilot would cover the period from January 24, 2006, through December 29, 2006. Nasdaq notes that the existing pilot reduced by 80% the fees that non-professionals paid for NQDS data prior to August 31, 2000. Continuing the reduction of NQDS for non-professional users demonstrates Nasdaq's continued commitment to individual investors and responds to the dramatic increase in the demand for real-time market data by non-professional market participants. In addition, NASD member firms often supply real-time market data to their customers through automated means. Thus, NASD member firms' customers would benefit from the continued fee reduction.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with section 15A of the Act,[10] in general, and furthers the objectives of section 15A(b)(5) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the Nasdaq operates or controls, and it does not unfairly discriminate between customers, issuers, brokers, or dealers. Nasdaq also believes that the fee reduction enhances the public's access to market data that is relevant to investors when they make financial decisions and encourages increased public participation in the securities markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change was filed pursuant to section 19(b)(3)(A)(ii) of the Act[12] and Rule 19b–4(f)(2) thereunder,[13] because it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization.

At any time within 60 days of the filing of such proposed rule change, the

[5] Changes are marked to the rule text that appears in the electronic NASD Manual found at *http://www.nasd.com*. Prior to the date when The Nasdaq Stock Market LLC (''Nasdaq LLC'') commences operations, Nasdaq LLC will file a conforming change to the rules of Nasdaq LLC approved in Securities Exchange Act Release No. 53128 (January 13, 2006).

[6] Pursuant to NASD Rule 7010(e), Nasdaq separately distributes Level 1 data to non-professionals for a monthly fee of $1.00.

[7] *See* Securities Exchange Act Release No. 43190 (August 22, 2000), 65 FR 52460 (August 29, 2000) (notice of filing and order granting accelerated approval of NASD–00–47).

[8] *Id.*

[9] *See* Securities Exchange Act Release Nos. 44788 (September 13, 2001), 66 FR 48303 (September 19, 2001); 46446 (August 30, 2002), 67 FR 57260 (September 9, 2002); 48386 (August 21, 2003), 68 FR 51618 (August 27, 2003); and 50318 (September 3, 2004), 69 FR 54821 (September 10, 2004).

[10] 15 U.S.C. 78o–3.

[11] 15 U.S.C. 78o–3(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2006–009 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–009. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2006–009 and should be submitted on or before March 8, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–2104 Filed 2–14–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53257; File No. SR–NASD–2006–014]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto To Modify the Pricing for Non-Members Using Nasdaq's Brut and Inet Facilities

February 8, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 30, 2006, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. On February 1, 2006, Nasdaq submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and at the same time is granting accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the pricing for non-members using Nasdaq's Brut and Inet Facilities (''Nasdaq Facilities''). The filing will apply to these non-members the same unified pricing schedule that Nasdaq is instituting for members.[4] Nasdaq requests approval to implement the proposed rule change, as amended, retroactively as of February 1, 2006.

The text of the proposed rule change, as amended, is below. Proposed new language is in *italics*. Proposed deletions are in [brackets].

* * * * *

7010. System Services

(a)–(h) No change.

(i) Nasdaq Market Center and Brut Facility Order Execution

(1)–(6) No change.

(7) The fees applicable to non-members using Nasdaq's Brut *and Inet* Facilit[y]*ies* shall be the fees established for members under Rule 7010(i), as amended by SR–NASD–2005–019, SR–NASD–2005–035, SR–NASD–2005–048, SR–NASD–2005–071, SR–NASD–2005–125, SR–NASD–2005–137, [and] SR–NASD–2005–154, *and SR–NASD–2006–013*, and as applied to non-members by SR–NASD–2005–020, SR–NASD–2005–038, SR–NASD–2005–049, SR–NASD–2005–072, SR–NASD–2005–126, SR–NASD–2005–138, [and] SR–NASD–2005–155, *and SR–NASD–2006–014*.

(j)–(v) No change.

(w) INET System Connectivity

(1) No change.

(2) The *INET connectivity* fees applicable to non-members [using Nasdaq's INET Facility] shall be the fees established for members under Rule 7010(w), as established by SR–NASD–2005–128 and amended by SR–NASD–2005–147 *and SR–NASD–2006–013*, and as applied to non-members by SR–NASD–2005–128, [and] SR–NASD–2005–148, *and SR–NASD–2006–014*.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 30, 2006, Nasdaq filed SR–NASD–2006–013 with the Commission, establishing a new fee and

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Partial Amendment No. 1 clarifies that the proposed rule change was approved by the Nasdaq Board of Directors on February 1, 2006 and not January 24, 2006.

[4] SR–NASD–2006–013 (January 30, 2006).

[5] Securities Exchange Act Release Nos. 52902

credit schedule (effective February 1, 2006) for order execution and routing by NASD members that spans activity on the Nasdaq Market Center, Brut, and Inet (the ''Nasdaq Facilities''). Nasdaq proposes to establish that same fee and rebate structure for non-NASD members that use Brut and Inet. Nasdaq is seeking accelerated approval of the non-member fee and rebate structure as well as a retroactive effective date of February 1, 2006.

In SR–NASD–2005–128,[5] Nasdaq's filing to establish rules for the newly acquired Inet ECN, Nasdaq committed that it would, within 60 days of the closing of the acquisition of Inet, file an integrated fee and credit structure governing the use of all of the Nasdaq Facilities. Nasdaq states that the fee and rebate structure is based on multiple volume-based usage tiers that take into account the combined volume of a market participant on all of the Nasdaq Facilities. Nasdaq believes that this integrated and uniform pricing structure would encourage activity on the Nasdaq Facilities and would not provide financial incentives to use one system versus the other. Nasdaq states that this non-member filing would ensure that both NASD members and non-NASD member users will pay equivalent fees and receive equivalent credits based on their trading activity and that the imposition of those fees would have begun on the same February 1, 2006 start date.

Nasdaq states that NASD Rules 4901 and 4952 currently provide that Brut and Inet will not be available to non-members after February 8, 2006. However, Nasdaq anticipates submitting an immediately effective rule change to extend this date in a manner that would allow at least some of Brut and Inet's current non-member broker-dealer subscribers to continue using these systems during the transitional period prior to the date on which The NASDAQ Stock Market LLC (''NASDAQ LLC'') begins to operate as a national securities exchange (the ''Operational Date'').[6] The Commission-approved rules of NASDAQ LLC[7] provide that all users of the Nasdaq Facilities after the Operational Date must be members of NASDAQ LLC, and Nasdaq is making all non-member subscribers aware of the need to become members of NASDAQ LLC if they wish to continue to use any of the Nasdaq Facilities after the Operational Date.[8] Nasdaq believes that this filing is necessary, however, to ensure that non-members using Brut and Inet prior to the Operational Date would be subject to the same fee structure as members, regardless of the duration of their actual period of usage. Therefore, Nasdaq believes that, even if the period of non-member usage is not extended beyond February 8, 2006, this filing would be needed to establish the fees and credits for non-members between February 1, 2006 and February 8, 2006.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of section 15A of the Act,[9] in general, and with section 15A(b)(5) of the Act,[10] in particular, in that the proposed rule change, as amended, provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. The proposed rule change, as amended, applies to non-members that use Brut and Inet a fee change that is being implemented for NASD members that use the Nasdaq Facilities. Accordingly, Nasdaq believes that the proposed rule change, as amended, promotes an equitable allocation of fees between members and non-members using Nasdaq's order execution facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Nasdaq states that written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2006–014 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–014. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2006–014 and should be submitted on or before March 8, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory organization.[11] Specifically, the Commission believes that the proposed

[5] Securities Exchange Act Release Nos. 52902 (December 7, 2005), 70 FR 73810 (December 13, 2005) (SR–NASD–2005–128) and 52723 (November 2, 2005), 70 FR 67513 (November 7, 2005) (SR–NASD–2005–128).

[6] Nasdaq filed this rule change on February 7, 2006 (SR–NASD–2006–002).

[7] Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3350 (January 23, 2006) (File No. 10–131) (approving registration of Nasdaq Stock Market LLC as a National Securities Exchange).

[8] *See* Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131).

[9] 15 U.S.C. 78*o*–3.

[10] 15 U.S.C. 78*o*–3(b)(5).

[11] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

rule change, as amended, is consistent with section 15A(b)(5) of the Act,[12] which requires that the rules of the self-regulatory organization provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facilities or system which it operates or controls.

The Commission notes that this proposal would retroactively modify pricing for non-NASD members using the Nasdaq Facilities that would permit the schedule for non-NASD members to mirror the schedule applicable to NASD members that became effective February 1, 2006, pursuant to SR–NASD–2006–013.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day of the date of publication of the notice thereof in the **Federal Register**. The Commission notes that the proposed fees for non-NASD members are identical to those in SR–NASD–2006–013, which implemented those fees for NASD members and which became effective as of February 1, 2006. The Commission notes that this change will promote consistency in Nasdaq's fee schedule by applying the same pricing schedule with the same date of effectiveness for both NASD members and non-NASD members. Therefore, the Commission finds that there is good cause, consistent with section 19(b)(2) of the Act,[13] to approve the proposed rule change, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change, as amended, (File No. SR–NASD–2006–014), is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–2105 Filed 2–14–06; 8:45 am]

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[12] 15 U.S.C. 78*o*–3(b)(5).

[13] 15 U.S.C. 78s(b)(2).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53256; File No. SR–NASD–2006–013]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Establish a Unified Pricing Schedule for NASD Members Using the Nasdaq Market Center and Nasdaq's Brut and Inet Facilities

February 8, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 30, 2006, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On February 1, 2006, Nasdaq submitted Amendment No. 1 to the proposed rule change.[3] Nasdaq has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A)(ii)[4] of the Act and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to modify the pricing for NASD members using the Nasdaq Market Center and Nasdaq's Brut and Inet Facilities (''Nasdaq Facilities''). Nasdaq states that it will implement the proposed rule change on February 1, 2006.

The text of the proposed rule change, as amended, is below. Proposed new language is in *italics;* proposed deletions are in [brackets].[6]

* * * * *

7010. System Services

(a)–(b) No change.

(c)(1) No change.

(2) Exchange-Listed Securities Transaction Credit

NASD members that trade securities listed on the NYSE (''Tape A'') and Amex (''Tape B'') in over-the-counter transactions may receive from the NASD transaction credits based on the number of transactions attributed to them. A transaction is attributed to a member if (i) *for Tape B securities,* the transaction is executed through CAES, ITS, or Nasdaq's Brut *or Inet* Facilit[y]*ies*, and the member acts as liquidity provider (*i.e.*, the member sells in response to a buy order or buys in response to a sell order) or (ii) *for Tape A and Tape B securities,* the transaction is not executed through CAES, ITS, or Nasdaq's Brut *or Inet* Facilit[y]*ies*, and the member is identified as the executing party in a trade report submitted to the NASD that the NASD submits to the Consolidated Tape Association. An NASD member may earn credits from one or both pools maintained by the NASD, each pool representing 50% of the revenue paid by the Consolidated Tape Association to the NASD for each of Tape A and Tape B transactions after deducting the amount that the NASD pays to the Consolidated Tape Association for capacity usage. An NASD member may earn credits from the pools according to the member's pro rata share of all over-the-counter transactions attributed to NASD members in each of Tape A and Tape B for each calendar quarter.

(d)–(h) No change.

(i) Nasdaq Market Center, [and] Brut, *and Inet* [Facility] Order Execution *and Routing*

(1) The following charges shall apply to the use of the order execution *and routing* services of the Nasdaq Market Center, [and Nasdaq's] Brut, *and Inet* [Facility] *(the ''Nasdaq Facilities'') by* members for *all* Nasdaq-listed securities subject to the Nasdaq UTP Plan and for Exchange-Traded Funds *that are not* listed on *Nasdaq* [a national securities exchange]. The term ''Exchange-Traded Funds'' shall mean Portfolio Depository Receipts, Index Fund Shares, and Trust Issued Receipts as such terms are defined in Rule 4420(i), (j), and (l), respectively.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Partial Amendment No. 1 (''Amendment No. 1'') clarifies that the proposed rule change was approved by the Nasdaq Board of Directors on February 1, 2006 and not January 24, 2006.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] Changes are marked to the rule text that appears in the electronic NASD Manual found at *http://www.nasd.com.* Prior to the date when The NASDAQ Stock Market LLC (''NASDAQ LLC'') commences operations, NASDAQ LLC will file a conforming change to the rules of NASDAQ LLC approved in Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131).

[Order Entry]	
[Non-Directed Orders and Preferenced Orders]	[No charge]
Order Execution	
[Non-Directed or Preferenced] Order that accesses the Quote/Order of a market participant that does not charge an access fee to market participants accessing its Quotes/Orders through the Nasdaq *Facilities* [Market Center and/or Nasdaq's Brut Facility]:	
Charge to member entering order:	
[Average daily shares of liquidity provided through the Nasdaq Market Center and/or Nasdaq's Brut Facility by the member during the month:]	
[Greater than 10 million]	[$0.0027 per share executed (but no more than $108 per trade for trades in securities executed at $1.00 or less per share)]
Members with an average daily volume through the Nasdaq Facilities in all securities during the month of (i) more than 30 million shares of liquidity provided, and (ii) more than 50 million shares of liquidity accessed and/or routed [Greater than 2,000,000 but less than or equal to 10,000,000].	$0.0028 per share executed [(but no more than $112 per trade for trades in securities executed at $1.00 or less per share)]
2,000,000 or less] *Other members*	$0.0030 per share executed [(but no more than $120 per trade for trades in securities executed at $1.00 or less per share)]
Credit to member providing liquidity:	
[Average daily shares of liquidity provided through the Nasdaq Market Center and/or Nasdaq's Brut Facility by the member during the month:]	
Members with an average daily volume through the Nasdaq Facilities in all securities during the month of more than 30 million shares of liquidity provided.	$0.0025 per share executed [(but no more than $100 per trade for trades in securities executed at $1.00 or less per share)]
[Greater than 20 million]	
[Greater than 2,000,000 but less than or equal to 20,000,000]	[$0.0022 per share executed (but no more than $88 per trade for trades in securities executed at $1.00 or less per share)]
Other members [Less than or equal to 2,000,000]	$0.0020 per share executed [(but no more than $80 per trade for trades in securities executed at $1.00 or less per share)]
[Non-Directed or Preferenced] Order that accesses the Quote/Order of a market participant that charges an access fee to market participants accessing its Quotes/Orders through the Nasdaq Market Center:	
Charge to member entering order:	
[Average daily shares of liquidity provided through the Nasdaq Market Center and/or Nasdaq's Brut Facility by the member during the month:]	
Members with an average daily volume through the Nasdaq Facilities in all securities during the month of more than 500,000 shares of liquidity provided.	$0.001 per share executed (but no more than *$10,000 per month*) [$40 per trade for trades in securities executed at $1.00 or less per share)]
[500,000 or less]	
Other members [500,001 or more]	$0.001 per share executed [(but no more than $40 per trade for trades in securities executed at $1.00 or less per share, and no more than $10,000 per month)]
[Routed] Order[s] *Routing for Nasdaq-Listed Securities*	
Any order entered by a member that is routed outside of [both] the Nasdaq [Market Center and Nasdaq's Brut] Facilit[y]*ies* and that does not attempt to execute in *the* Nasdaq['s Brut] Facilit[y]*ies* prior to routing.	*The greater of (i)* $0.004 per share executed *or (ii) a pass-through of all applicable access fees charged by electronic communications networks that charge more than $0.003 per share executed.*
Any other order entered by a member that is routed outside of [both] the Nasdaq [Market Center and Nasdaq's Brut] Facilit[y]*ies:*	
[Average daily shares of liquidity provided through the Nasdaq Market Center and/or Nasdaq's Brut Facility by the member during the month and average daily shares accessed through and/or routed from the Nasdaq Market Center and/or Nasdaq's Brut Facility by the member during the month (excluding orders routed outside of both the Nasdaq Market Center and Nasdaq's Brut Facility that do not attempt to execute in Nasdaq's Brut Facility prior to routing):]	
[Greater than 20 million shares of liquidity provided and greater than 40 million shares accessed and/or routed]	[$0.0025 per share executed]
[Greater than 10 million but less than or equal to 20 million shares of liquidity provided and any amount accessed or routed, OR greater than 20 million shares of liquidity provided and 40 million or fewer shares accessed and/or routed]	[$0.0027 per share executed]

Members with an average daily volume through the Nasdaq Facilities in all securities during the month of (i) more than 30 million shares of liquidity provided, and (ii) more than 50 million shares of liquidity accessed and/or routed [Greater than 2,000,000 but less than or equal to 10,000,000 shares of liquidity provided and any amount accessed and/or routed].	*The greater of (i)* $0.0028 per share executed *or (ii) a pass-through of all applicable access fees charged by electronic communications networks that charge more than $0.003 per share executed.*
Other members [Less than or equal to 2,000,000 shares of liquidity provided and any amount accessed and/or routed].	*The greater of (i)* $0.0030 per share executed *or (ii) a pass-through of all applicable access fees charged by electronic communications networks that charge more than $0.003 per share executed.*
Order Routing for Exchange-Traded Funds Not Listed On Nasdaq	
Order routed to the New York Stock Exchange (''NYSE'') through its DOT system.	*See DOT fee schedule in Rule 7010(i)(6).*
Any other order entered by a member that is routed outside of the Nasdaq Facilities and that does not attempt to execute in the Nasdaq Facilities prior to routing.	*$0.004 per share executed.*
Order routed to the American Stock Exchange (''Amex'') after attempting to execute in the Nasdaq Facilities.	*$0.01 per share executed.*
Order routed through the Intermarket Trading System (''ITS'') after attempting to execute in the Nasdaq Facilities.	*$0.0007 per share executed.*
Order routed to venues other than the NYSE and Amex after attempting to execute in the Nasdaq Facilities.	*$0.0035 per share executed.*
[Order Cancellation]	
[Non-Directed and Preferenced Orders]	[No charge].

(2) For purposes of assessing Nasdaq [Market Center and Brut] Facilit[y]*ies* fees and credits hereunder, (A) a Discretionary Order that executes prior to being displayed as a Quote/Order will always be deemed to be accessing liquidity unless it is executed by (or receives delivery of) a displayed Discretionary Order at a price in the discretionary price range of the displayed Discretionary Order, and (B) a Discretionary Order that executes after being displayed as a Quote/Order will always be deemed to be providing liquidity, unless the displayed Discretionary Order executes against (or is delivered to) a Quote/Order or Non-Directed Order that has not been designated ''Immediate or Cancel,'' at a price in its discretionary price range.

(3) No change.

(4) Opening Cross.

[Commencing on January 1, 2006, m]Members shall be assessed the following Nasdaq Market Center execution fees for quotes and orders executed in the Nasdaq Opening Cross:

Market-on-Open, Limit-on-Open, *Good-till-Cancelled, Immediate-or-Cancel,* and Day orders executed in the Nasdaq Opening Cross.	$0.0005 per share executed for the net number of buy and sell shares up to a maximum of $10,000 per firm per month.
All other quotes and orders executed in the Nasdaq Opening Cross	No charge for execution.

(5) *Except as provided in paragraph (6), the following charges shall apply to the use of the order execution and routing services of the Nasdaq Facilities by members for* [There shall be no charges or credits for order entry, execution, routing, or cancellation by members accessing the Nasdaq Market Center or Nasdaq's Brut Facility to buy or sell exchange-listed] securities subject to the Consolidated Quotations Service and Consolidated Tape Association plans[,] other than *Exchange-Traded Funds (''Covered Securities'')*:

[(A) the charges in Rule 7010(i)(1) for Exchange-Traded Funds,]

[(B) charges described in Rule 7010(d),]

[(C) a fee of $0.0004 per share executed for orders delivered by Nasdaq's Brut Facility to an exchange using the exchange's proprietary order delivery system if such orders do not attempt to execute in Nasdaq's Brut Facility or the Nasdaq Market Center prior to routing to the exchange,]

[(D) a fee of $0.009 per share executed for any limit order delivered by Nasdaq's Brut Facility to the New York Stock Exchange (''NYSE'') using the NYSE's proprietory order delivery system if such an order is not an on-close order, is not executed in the opening, and remains at the NYSE for more than 5 minutes]

[(E) for a pilot period beginning December 1, 2005 and ending February 28, 2006, a credit of $0.0005 per share executed to a member providing liquidity for a transaction in the following stocks: Advanced Micro Devices Inc. (AMD); Apache Corp. (APA); AT&T Corp. (T); Avaya, Inc. (AV); Baker Hughes, Inc. (BHI); BJ Services Co. (BJS); Bristol-Myers Squibb Co. (BMY); Burlington Resources, Inc. (BR); Calpine Corp. (CPN); Charles Schwab Corp. (SCH); Citigroup Inc. (C); ConocoPhillips (COP); Corning Inc. (GLW); Devon Energy Corp. (DVN); EMC Corp. (EMC); Exxon Mobil Corp. (XOM); Ford Motor Co. (F); Gateway, Inc. (GTW); General Electric Co. (GE); Halliburton Co. (HAL); Hewlett-Packard Co. (HPQ); Johnson & Johnson (JNJ); JPMorgan Chase & Co. (JPM); Kohl's Corp. (KSS); LSI Logic Corp. (LSI); Micron Technology, Inc. (MU); Motorola, Inc. (MOT); Noble Corp. (NE); Occidental Petroleum Corp. (OXY); Office Depot Inc. (ODP); Pfizer Inc. (PFE); Phelps Dodge Corp. (PD); Pulte Homes, Inc. (PHM); Qwest Communications International Inc. (Q); Schlumberger Ltd. (SLB); Solectron Corp. (SLR); Sovereign Bancorp, Inc. (SOV); Time Warner, Inc. (TWX); Valero Energy Corp. (VLO); and Verizon Communications, Inc. (VZ).]

Order Execution	
Order that accesses the Quote/Order of a Nasdaq Facility market participant:	
Charge to member entering order	$0.0007 per share executed.
Credit to member providing liquidity:	
Members with an average daily volume through the Nasdaq Facilities in Covered Securities during the month of more than 5 million shares of liquidity accessed, provided, or routed.	$0.0005 per share executed.
Other members	No credit.
Order Routing	
Order routed to Amex	$0.01 per share executed.
Order routed through the ITS	$0.0007 per share executed.
Order routed to NYSE	See DOT fee schedule in Rule 7010(i)(6).
Order for NYSE-listed Covered Security routed to venue other than the NYSE.	$0.0015 per share executed.
Order for Covered Security listed on venue other than the NYSE and routed to venue other than Amex.	$0.0035 per share executed.

(6) *The following charges shall apply to the use of the Nasdaq Facilities by members for routing to the NYSE through its DOT system for all securities, including Exchange-Traded Funds:*

Order charged a fee by the NYSE specialist	$0.01 per share executed.
Order that attempts to execute in the Nasdaq Facilities prior to routing and that is not charged a fee by the NYSE specialist.	No charge.
Order that does not attempt to execute in the Nasdaq Facilities prior to routing and that is not charged a fee by the NYSE specialist:	
Average daily shares of liquidity routed through Nasdaq's DOT linkage by the member during the month:	
More than 30 million	$0.0001 per share executed.
Between 2,000,001 and 30 million	$0.0003 per share executed.
Between 250,001 and 2 million	$0.0005 per share executed.
Between 100,001 and 250,000	$0.001 per share executed.
100,000 or less	$0.01 per share executed.

[(6)](*7*) The fees applicable to non-members using Nasdaq's Brut Facility shall be the fees established for members under Rule 7010(i), as amended by SR–NASD–2005–019, SR–NASD–2005–035, SR–NASD–2005–048, SR–NASD–2005–071, SR–NASD–2005–125, SR–NASD–2005–137, and SR–NASD–2005–154, and as applied to non-members by SR–NASD–2005–020, SR–NASD–2005–038, SR–NASD–2005–049, SR–NASD–2005–072, SR–NASD–2005–126, SR–NASD–2005–138, and SR–NASD–2005–155.

(j)–(v) No change.

(w) INET System [Order Execution] *Connectivity*

(1) [For a period of time not to exceed 60 days after INET becomes a facility of Nasdaq, t]*T*he following charges shall apply to *telecommunication protocols* [the] use*d* [of the order execution services of] *to access* Nasdaq's INET System [by Participants for]:

[NASDAQ-listed securities]

[Order Execution]

[Non-Directed Order that accesses the Quote/Order of a market Participant through Nasdaq's INET System:].	
[Charge to Participant entering order:].	
[Average daily shares of liquidity provided through Nasdaq's INET System by the Participant during the month:].	
[Greater than 60 million shares accessed or routed and 5 million shares provided].	[$0.0027 per share executed].
[Greater than 40 million shares but less than 60 million shares accessed or routed and 5 million shares provided].	[$0.0028 per share executed].
[Less than 5 million shares provided or less than 40 million shares accessed or routed].	[$0.0030 per share executed].
[Credit to Participant providing liquidity:].	
[Average daily shares of liquidity provided through Nasdaq's INET System by the Participant during the month:].	
[Greater than 30 million shares provided or greater than 30 million shares accessed or routed or greater than 50 million shares combined provided, accessed or routed].	[$0.0025 per share executed].
[Less than or equal to 30 million shares provided and less than or equal to 30 million shares accessed or routed and less than or equal to 50 million shares combined provided, accessed, or routed].	[$0.002 per share executed].

[Any order that matches against another order of the same Participant]	[$0.00025 per share per side.].
[Routed Orders]	
[Any other order entered by a Participant that is routed outside of Nasdaq's INET System].	[$0.0025 per share executed].
[Any other order entered by a Participant that is routed to the NASDAQ Opening or Closing Cross].	[$0.001 per share executed]
[AMEX-listed stocks]	
[Order Execution]	
[Non-Directed Order that accesses the Quote/Order of a market Participant through Nasdaq's INET System:].	
[Credit to Participant entering order:]	[$0.0009 per share executed].
[Charge to Participant providing liquidity:]	[$0.001 per share executed].
[Any order that matches against another order of the same Participant]	[No charge].
[Routed Orders]	
[Any order entered by a Participant that is routed outside of Nasdaq's INET System through DOT].	[$0.01 per share executed].
[Any order entered by a Participant that is routed outside of Nasdaq's INET System other than through DOT].	[$0.0035 per share executed].
[AMEX-listed ETFs]	
[Order Execution]	
[Non-Directed Order that accesses the Quote/Order of a market Participant through Nasdaq's INET System:].	
[Charge to Participant entering order:].	
[Average daily shares of liquidity provided through Nasdaq's INET System by the Participant during the month:].	
[Greater than 60 million shares accessed or routed and 5 million shares provided].	[$0.0027 per share executed].
[Greater than 40 million shares but less than 60 million shares accessed or routed and 5 million shares provided].	[$0.0028 per share executed].
[Less than 5 million shares provided or less than 40 million shares accessed or routed].	[$0.0030 per share executed].
[Credit to Participant providing liquidity:].	
[Average daily shares of liquidity provided through Nasdaq's INET System by the Participant during the month:].	
[Greater than 30 million shares provided or greater than 30 million shares accessed or routed or greater than 50 million shares combined provided, accessed or routed].	[$0.0025 per share executed].
[Less than or equal to 30 million shares provided and less than or equal to 30 million shares accessed or routed and less than or equal to 50 million shares combined provided, accessed, or routed].	[$0.002 per share executed].
[Any order that matches against another order of the same Participant]	[$0.00025 per share per side.].
[Routed Orders]	
[Any order entered by a Participant that is routed outside of Nasdaq's INET System to the AMEX].	[$0.01 per share executed].
[Any order entered by a Participant that is routed outside of Nasdaq's INET System other than to the AMEX].	[$0.0035 per share executed].
[NYSE-listed stocks]	
[Order Execution]	
[Non-Directed Order that accesses the Quote/Order of a market Participant through Nasdaq's INET System:].	
[Credit to Participant entering order:]	[$0.0009 per share executed].
[Charge to Participant providing liquidity:]	[$0.001 per share executed].
[Any order that matches against another order of the same Participant]	[No charge].
[Routed Orders]	
[Any order entered by a Participant that is routed outside of Nasdaq's INET System through DOT that is charged a fee by the specialist (billable)].	[$0.01 per share executed].

[Charge to any order entered by a Participant that is routed outside of Nasdaq's INET System through DOT that is not charged a fee by the specialist (non-billable):].	
[Average daily shares of billable and non-billable NYSE DOT shares:].	
[Greater than 30 million shares]	[$0.0001].
[Greater than 2 million shares but less than or equal to 30 million shares].	[$0.0003].
[Greater than 250,000 shares but less than or equal to 2 million shares].	[$0.0005].
[Greater than 100,000 shares but less than or equal to 250,000 shares]	[$0.001].
[Less than or equal to 100,000 shares]	[$0.01].
[Any order entered by a Participant that is routed outside of Nasdaq's INET System other than through DOT].	[$0.0015 per share executed].

[Upon Participant's request, added liquidity among Participants that are wholly owned by a common parent may be aggregated. INET will distribute the market data revenue based on the number of tape reportable transactions executed by the Participant, as paid to INET.]

[Market Data Revenue Sharing for AMEX Listed (Tape B) Securities]

[Subscribers that add liquidity to the INET limit order book in Tape B securities (e.g. AMEX listed securities) will receive 50% of the market data revenue paid by the Consolidated Tape Association.]

Port Fees:

Connectivity to Harborside Financial Center and Secaucus Datacenters

- [$400 per month for each OUCH®/FIX pair
- $400 per month for each ITCH® data feed pair
- $400 per month for each DROP® pair]
- $400 per month for each [Compressed ITCH® data feed] *port* pair*, other than*
- [$1000 per month for each] Multicast ITCH® data feed pairs*, for which the fee is $1000 per month*

Internet Ports: An additional $200 per month for each Internet port that requires additional bandwidth.

Connectivity to Chicago Datacenter

- $800 per month for each [OUCH®/FIX] *port* pair
- [$800 per month for each ITCH® data feed pair
- $800 per month for each DROP® pair]

All port fees, not including Internet Bandwidth surcharges, will be waived for Subscribers that for a calendar month have an average daily share volume for executed orders exceeding 30 million shares of added liquidity.

INET Terminal Fees:

Each ID is subject to a minimum commission fee of $50 per month unless it executes a minimum of 100,000 shares.

Each ID receiving market data is subject to pass-through fees for use of these services. Pricing for these services is determined by the exchanges and/or market center.

- Each ID that is given web access is subject to a $50 monthly fee.

Portal Fees:

Each ID is subject to a monthly user fee of $150.

Each ID receiving market data is subject to pass-through fees for use of these services. Pricing for these services is determined by the exchanges and/or market center.

(2) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to establish a new fee and credit schedule for order execution and routing that spans activity on the Nasdaq Facilities.[7] In SR–NASD–2005–128,[8] Nasdaq's filing to establish rules for the newly acquired Inet ECN, Nasdaq committed that it would, within 60 days of the closing of the acquisition of Inet, file an integrated fee and credit structure governing the use of all of the Nasdaq Facilities. Nasdaq states that the fee and rebate structure is based on multiple volume-based usage tiers that take into account the combined volume of a market participant on all of the Nasdaq Facilities. Nasdaq believes that this integrated and uniform pricing structure will encourage activity on the Nasdaq Facilities and will not provide financial incentives to use one system versus the other. Nasdaq notes that under the new structure, the volumes required to receive certain discounted fees or enhanced credits are higher than is the case under current pricing for the Nasdaq Market Center and Brut. Nasdaq states that this is a function of the fact that the combined volume of the three systems would be markedly higher than that of any system in isolation, so an adjustment of the tier thresholds would be necessary to prevent the combining of the systems from resulting in unwarranted fee decreases. As stated in a Current Report on Form 8–K and related press release filed by Nasdaq with the Commission, Nasdaq does not currently anticipate that the new pricing structure would have a material impact on its financial results.[9]

Specific features of the new pricing structure for Nasdaq-listed securities and exchange-traded funds (''ETFs'') are as follows:

- Members with an average daily volume through the Nasdaq Facilities in all securities (i.e., listed on Nasdaq or elsewhere) during the month of (i) more than 30 million shares of liquidity provided, and (ii) more than 50 million shares of liquidity accessed and/or routed would pay $0.0028 per share to access liquidity from market participants that do not charge an access fee; all others would pay $0.003 per

[7] This filing would apply to NASD members. Nasdaq has submitted SR–NASD–2006–014 to apply the same pricing structure to non-members.

[8] Securities Exchange Act Release Nos. 52902 (December 7, 2005), 70 FR 73810 (December 13, 2005) (SR–NASD–2005–128) and 52723 (November 2, 2005), 70 FR 67513 (November 7, 2005) (SR–NASD–2005–128).

[9] *See* Current Report on Form 8-K of The Nasdaq Stock Market, Inc. (January 6, 2006) (available at *http://www.sec.gov/Archives/edgar/data/1120193/000119312506002815/0001193125-06-002815-index.htm*).

share to access liquidity from market participants that do not charge an access fee.[10]

• Members with an average daily volume through the Nasdaq Facilities in all securities during the month of more than 30 million shares of liquidity provided and that do not charge an access fee would receive a credit of $0.0025 per share when providing liquidity; others that do not charge an access fee would receive $0.002 per share; and members that charge an access fee would not receive a credit.

• Members with an average daily volume through the Nasdaq Facilities in all securities during the month of more than 500,000 shares of liquidity provided would pay $0.001 per share to access liquidity from market participants that charge an access fee, with a cap of $10,000 per month; all others would pay $0.001 per share with no cap.

When routing orders for Nasdaq-listed securities that check the books of the Nasdaq Facilities before routing, members with an average daily volume through the Nasdaq Facilities in all securities during the month of (i) more than 30 million shares of liquidity provided, and (ii) more than 50 million shares of liquidity accessed and/or routed would pay the greater of $0.0028 per share or the applicable access fees of electronic communications networks (ECNs) that charge more than $0.003 per share. Other members would pay the greater of $0.003 per share or the applicable access fees of ECNs that charge more than $0.003 per share. Finally, members routing orders for Nasdaq-listed securities that do not first check the books of the Nasdaq Facilities would pay the greater of $0.004 per share or the applicable access fees of ECNs that charge more than $0.003 per share. Thus, in most cases, Nasdaq would pass through to its market participants the cost that it is charged when routing to ECNs that charge more than $0.003 per share.

The fees for routing ETFs not listed on Nasdaq would be as follows: (i) $0.01 per share for an order executed to the American Stock Exchange (''Amex'') after checking the Nasdaq Facilities, (ii) $0.0035 per share for an order executed on venues other than the New York Stock Exchange (''NYSE'') and Amex after checking the Nasdaq Facilities, (iii) $0.0007 for an order executed through the Intermarket Trading System (''ITS'') after checking the Nasdaq Facilities, and (iv) $0.004 per share for an order that is executed without checking the Nasdaq Facilities.[11] Fees for ETF orders executed on the NYSE are described below.[12]

Specific features of the new pricing structure for non-Nasdaq-listed securities other than ETFs (''Covered Securities'') would be as follows:

• All members would pay $0.0007 per share for orders that access liquidity from the Nasdaq Facilities.

• Members with an average daily volume through the Nasdaq Facilities in Covered Securities during the month of more than 5 million shares of liquidity accessed, provided, or executed[13] would receive a credit of $0.0005 per share of liquidity provided; others would not receive a liquidity provider credit. As a result, Nasdaq would be ending the liquidity provider credit pilot for 40 NYSE-listed stocks under Rule 7010(i)(5)(E).[14]

• The fees for routing Covered Securities would be as follows: (i) $0.01 per share for an order executed on Amex, (ii) $0.0035 per share for an order for a security listed on a venue other than the NYSE and executed on a venue other than Amex, (iii) $0.0015 per share for an NYSE-listed Covered Security executed on a venue other than the NYSE, and (iv) $0.0007 per share for an order executed on the ITS.[15]

Fees for orders in NYSE-listed Covered Securities and NYSE-listed ETFs routed to the NYSE through its DOT system are described below:

• Orders that are routed through DOT after accessing the Nasdaq Facilities and that are not charged a fee by the NYSE specialist would be free. Members would pay a fee of $0.01 per share for orders that are charged a fee by the NYSE specialist.

• The fee for orders routed through DOT without accessing the Nasdaq Facilities would depend on a member's volume of usage of Nasdaq's DOT linkage. Members routing an average daily volume of more than 30 million shares during the month would pay $0.0001 per share executed; members routing between 2,000,001 and 30 million shares would pay $0.0003 per share executed; members routing between 250,001 and 2 million shares would pay $0.0005 per share executed; members routing between 100,001 and 250,000 shares would pay $0.001 per share executed; and members routing 100,000 shares or less would pay $0.01 per share executed.

Other changes being effected by the proposed rule change would be as follows:

• Nasdaq would be eliminating fee and credit caps currently in place for trades priced under $1. Nasdaq states that the caps were instituted as a response to high trading volumes in certain low-priced stocks several years ago and have less relevance to the current trading environment.

• Good-till-Cancelled and Immediate-or-Cancel orders would be added to the list of order types that pay a $0.0005 per share fee when executed in Nasdaq's Opening Cross. Other fees for the Opening Cross and the Closing Cross would be unchanged.

• The Nasdaq Market Center and Brut would no longer share market data revenue associated with transactions in securities listed on the NYSE that are executed through these systems. Nasdaq represents that Inet does not currently share such revenue.

• Most Inet fees contained in Rule 7010(w) would be deleted. However, fees for use of Inet's telecommunications protocols would be maintained. Since Inet continues to use different telecommunications protocols and is operated out of its own data centers, Nasdaq believes that it is appropriate to maintain Inet's current connectivity pricing. Nasdaq believes that the telecommunications charges associated with accessing Inet are comparable to those associated with accessing the Nasdaq Market Center and Brut. However, Nasdaq would be deleting some redundant language from the rule language describing these fees.

Nasdaq would be deleting unnecessary references to order entry fees, order cancellation fees, and preferenced orders.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,[16] in general, and with Section 15A(b)(5) of the Act,[17] in particular, in that the proposed rule change, as amended, provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq states that

[10] Telephone conversation between John Yetter, Associate General Counsel, Exchange, and David Liu and Michou Nguyen, Attorneys, Division of Market Regulation (''Division''), Commission, on February 2, 2006.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *See* Securities Exchange Act Release Nos. 53081 (January 9, 2006), 71 FR 2608 (January 17, 2006) (SR–NASD–2005–154) and 53082 (January 9, 2006), 71 FR 2607 (January 17, 2006) (SR–NASD–2005–155).

[15] Telephone conversation between John Yetter, Associate General Counsel, Exchange, and David Liu and Michou Nguyen, Attorneys, Division, Commission, on February 2, 2006.

[16] 15 U.S.C. 78*o*–3.

[17] 15 U.S.C. 78*o*–3(b)(5).

the proposed rule change, as amended, would establish a uniform fee schedule for the Nasdaq Facilities that takes account of the higher volumes associated with the combining of the Nasdaq Facilities for purposes of determining pricing discounts. Nasdaq does not currently anticipate that the new pricing structure would have a material impact on its financial results.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq states that written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, is subject to Section 19(b)(3)(A)(ii) of the Act [18] and subparagraph (f)(2) of Rule 19b–4 [19] thereunder because it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[20]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2006–013 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–013. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2006–013 and should be submitted on or before March 8, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–2106 Filed 2–14–06; 8:45 am]

BILLING CODE 8010–01–P

[18] 15 U.S.C. 78s(b)(3)(A)(ii).

[19] 17 CFR 240.19b–4(f)(2).

[20] The effective date of the original proposed rule change is January 30, 2006, and the effective date of Amendment No. 1 is February 1, 2006. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, the Commission considers the period to commence on February 1, 2006, the date on which the Exchange submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53254; File No. SR–NASD–2006–008]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change To Re-establish a Fee Pilot for National Quotation Data Service

February 8, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 24, 2006, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to re-establish retroactively through September 1, 2005, a pilot program under NASD Rule 7010(h), which reduced from $50 to $10 the monthly fee that non-professional users pay to receive National Quotation Data Service (''NQDS''). Nasdaq is simultaneously filing a separate rule proposal to re-establish the same pilot program prospectively through December 29, 2006, the date the pilot inadvertently was permitted to lapse. The text of the rule is below. There is no new proposed language.[3]

7010. System Services

* * * * *

(h) National Quotation Data Service (NQDS)

(1) Except as provided in subparagraph (2) of this section, the charge to be paid for each interrogation or display device receiving all or any portion of the information disseminated through the NQDS shall be $50.00 per

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rule text that appears in the electronic NASD Manual found at *http://www.nasd.com*. Prior to the date when The Nasdaq Stock Market LLC (''Nasdaq LLC'' commences operations, Nasdaq LLC will file a conforming change to the rules of Nasdaq LLC approved in Securities Exchange Act Release No. 53128 (January 13, 2006).

month. The NQDS information that will be provided through service consists of individual market maker quotations, Nasdaq Level 1 Service and the Last Sale Information Service.

(2) The charge to be paid by a non-professional for each interrogation or display device receiving all or any portion of the NQDS information disseminated through an authorized vendor shall be $10.00 per month.

(3) A ''non-professional'' is a natural person who is neither:

(A) Registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association;

(B) Engaged as an ''investment adviser'' as that term defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor

(C) Employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to re-establish retroactively through September 1, 2005, the fee reduction pilot program under NASD Rule 7010(h) that reduced from $50 to $10 the monthly fee that non-professional users pay to receive NQDS.

NQDS delivers market maker quotations, Nasdaq Level 1 [4] service (including calculation and display of the inside market), and last sale information that is dynamically updated on a real-time basis. NQDS data is used not only by firms, associated persons, and other market professionals, but also by non-professionals who receive the service through authorized vendors, including, for example, on-line brokerage firms. Prior to August 31, 2000, NQDS data was available through authorized vendors at a monthly rate of $50 for professionals and non-professionals users alike. In August 2000, the NASD, through Nasdaq, filed a rule change to reduce from $50 to $10 the monthly fee that non-professional users pay to receive NQDS data.[5] The Commission approved the pilot on August 22, 2000, and the fee reduction commenced on August 31, 2000 on a one-year pilot basis.[6] On September 5, 2001, August 29, 2002, August 15, 2003, and August 20, 2004, Nasdaq filed proposed rule changes to extend the pilot for additional one-year periods.[7]

Nasdaq has consistently supported broad, effective dissemination of market information to public investors. Thus, Nasdaq is proposing to re-establish the fee-reduction pilot for the remainder of 2006. The pilot would cover the period from January 24, 2006, through December 29, 2006. Nasdaq notes that the existing pilot reduced by 80% the fees that non-professionals paid for NQDS data prior to August 31, 2000. Continuing the reduction of NQDS for non-professional users demonstrates Nasdaq's continued commitment to individual investors and responds to the dramatic increase in the demand for real-time market data by non-professional market participants. In addition, NASD member firms often supply real-time market data to their customers through automated means. Thus, NASD member firms' customers would benefit from the continued fee reduction.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[8] in general, and with section 15A(b)(5) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Nasdaq operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers. Nasdaq also believes that the fee reduction enhances the public's access to market data that is relevant to investors when they make financial decisions and encourages increased public participation in the securities markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2006–008 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

[4] Pursuant to NASD Rule 7010(e), Nasdaq separately distributes Level 1 data to non-professionals for a monthly fee of $1.00.

[5] *See* Securities Exchange Act Release No. 43190 (August 22, 2000), 65 FR 52460 (August 29, 2000) (notice of filing and order granting accelerated approval of NASD–00–47).

[6] *Id.*

[7] *See* Securities Exchange Act Release Nos. 44788 (September 13, 2001), 66 FR 48303 (September 19, 2001); 46446 (August 30, 2002), 67 FR 57260 (September 9, 2002); 48386 (August 21, 2003), 68 FR 51618 (August 27, 2003); and 50318 (September 3, 2004), 69 FR 54821 (September 10, 2004).

[8] 15 U.S.C. 78*o*–3.

[9] 15 U.S.C. 78*o*–3(b)(5).

All submissions should refer to File Number SR–NASD–2006–008. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2006–008 and should be submitted on or before March 8, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–2110 Filed 2–14–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53253; File No. SR–PCX–2005–123]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Currency Trust Shares.

February 8, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 11, 2005, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its wholly owned subsidiary PCX Equities, Inc. (''PCXE'' or ''Corporation''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On January 13, 2006, PCX filed Amendment No. 1 to the proposed rule change.[3] On January 13, 2006, PCX filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through PCXE, proposes to amend its rules governing the Archipelago Exchange (''ArcaEx''), the equities trading facility of PCXE. The Exchange proposes new PCXE Rule 8.202 in order to permit trading, either by listing or pursuant to unlisted trading privileges (''UTP''), shares issued by a trust that holds a specified non-U.S. currency (''Currency Trust Shares''). In addition, the Exchange proposes to trade, pursuant to UTP, Euro Shares (''Shares'' or ''Euro Shares''), which represent units of fractional undivided beneficial interest in and ownership of the Euro Currency Trust (the ''Trust''), which is sponsored by Rydex Specialized Products LLC.

The text of the proposed rule change appears below. Additions are in italics. Deleted items are in [brackets].

* * * * *

Rule 8.202.

Currency Trust Shares

(a) The Corporation will consider for trading, whether by listing or pursuant to unlisted trading privileges, Currency Trust Shares that meet the criteria of this Rule.

(b) Applicability. This Rule is applicable only to Currency Trust Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the provisions of the trust issued receipts rules, Bylaws, and all other rules and procedures of the Board of Directors shall be applicable to the trading on the Corporation of such securities. Currency Trust Shares are included within the definition of ''security'' or ''securities'' as such terms are used in the Bylaws and Rules of the Corporation.

(c) Currency Trust Shares. The term ''Currency Trust Shares'' as used in the Rules shall, unless the context otherwise requires, mean a security that (a) is issued by a trust (''Trust'') that holds a specified non-U.S. currency deposited with the Trust; (b) when aggregated in some specified minimum number may be surrendered to the Trust by the beneficial owner to receive the specified non-U.S. currency; and (c) pays beneficial owners interest and other distributions on the deposited non-U.S. currency, if any, declared and paid by the Trust.

(d) Designation of Non-U.S. Currency. The Corporation may trade, either by listing or pursuant to unlisted trading privileges, Currency Trust Shares that hold a specified non-U.S. currency. Each issue of Currency Trust Shares shall be designated as a separate series and shall be identified by a unique symbol.

(e) Initial and Continued Listing. Currency Trust Shares will be listed and traded on the Corporation subject to application of the following criteria:

(1) Initial Listing —the Corporation will establish a minimum number of Currency Trust Shares required to be outstanding at the time of commencement of trading on the Corporation.

(2) Continued Listing —following the initial 12 month period following commencement of trading on the Corporation of Currency Trust Shares, the Corporation will consider the suspension of trading in or removal from listing of such series under any of the following circumstances:

(i) if the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Currency Trust Shares for 30 or more consecutive trading days; or

(ii) if the Trust has fewer than 50,000 Currency Trust Shares issued and outstanding; or

(iii) if the market value of all Currency Trust Shares issued and outstanding is less than $1,000,000; or

(iv) if the value of the applicable non-U.S. currency is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the sponsor, Trust, custodian or the Exchange or the Exchange stops providing a hyperlink on its Web site to any such unaffiliated applicable non-U.S. currency value;

(v) if the Indicative Trust Value is no longer made available on at least a 15-second delayed basis; or

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 3 In Amendment No. 1, the Exchange clarified and supplemented certain aspects of its proposal. Amendment No. 1 replaces and supplements the information provided in various sections of the Exchange's Form 19b–4.

[4] In Amendment No. 2, the Exchange further clarified and supplemented certain aspects of its proposal.

(vi) if such other event shall occur or condition exists which in the opinion of the Corporation makes further dealings on the Corporation inadvisable.

Upon termination of a Trust, the Corporation requires that Currency Trust Shares issued in connection with such entity Trust be removed from Corporation listing. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of the Trust falls below a specified amount.

(3) Term —The stated term of the Trust shall be as stated in the Trust prospectus. However, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

(4) Trustee —The following requirements apply:

(i) The trustee of a Trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee.

(ii) No change is to be made in the trustee of a listed issue without prior notice to and approval of the Corporation.

(5) Voting —Voting rights shall be as set forth in the applicable Trust prospectus.

(f) Limitation of Corporation Liability. Neither the Corporation nor any agent of the Corporation shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any applicable non-U.S. currency value; the current value of the applicable non-U.S. currency required to be deposited to the Trust in connection with issuance of Currency Trust Shares; net asset value; or any other information relating to the purchase, redemption, or trading of the Currency Trust Shares, resulting from any negligent act or omission by the Corporation, or any agent of the Corporation; or any act, condition or cause beyond the reasonable control of the Corporation, its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in an applicable non-U.S. currency.

(g) Information Barrier. An ETP Holder acting as a registered Market Maker or Market Maker Authorized Trader in Currency Trust Shares is obligated to comply with PCXE Rule 7.26 pertaining to limitations on dealings when such Market Maker or Market Maker Authorized Trader, or affiliate of such persons, engages in Other Business Activities. For purposes of Currency Trust Shares only, Other Business Activities shall include trading in the applicable non-U.S. currency, options, futures or options on futures on such currency, or any other derivatives based on such currency.

(h) Market Maker Accounts. An ETP Holder acting as a registered Market Maker in Currency Trust Shares must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in the applicable non-U.S. currency, options, futures or options on futures on such currency, or any other derivatives based on such currency, which the Market Maker may have or over which it may exercise investment discretion. No Market Maker shall trade in the applicable non-U.S. currency, options, futures or options on futures on such currency, or any other derivatives based on such currency, in an account in which a Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule.

In addition to the existing obligations under Exchange rules regarding the production of books and records, the ETP Holder acting as a Market Maker in Currency Trust Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the applicable non-U.S. currency, options, futures or options on futures on such currency, or any other derivatives based on such currency, as may be requested by the Exchange.

(i) In connection with trading the applicable non-U.S. currency, options, futures or options on futures on such currency, or any other derivatives based on such currency (including Currency Trust Shares), the ETP Holder acting as a Market Maker in Currency Trust Shares shall not use any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the applicable non-U.S. currency, options, futures or options on futures on such currency, or any other derivatives based on such currency.

Commentary:

.01 A Currency Trust Share is a Trust Issued Receipt that holds a specified non-U.S. currency deposited with the Trust.

.02 The Corporation requires that ETP Holders provide all purchasers of newly issued Currency Trust Shares a prospectus for the series of Currency Trust Shares.

.03 Transactions in Currency Trust Shares will occur during the trading hours specified in PCXE Rule 7.34.

.04 The Corporation will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before trading, either by listing or pursuant to unlisted trading privileges, Currency Trust Shares.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below, and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add new PCXE Rule 8.202 in order to permit trading, either by listing or pursuant to UTP, of Currency Trust Shares.[5] The Exchange also proposes to trade the Shares of the Trust pursuant to UTP. The New York Stock Exchange, Inc. (the ''NYSE'') has recently proposed to list and trade the Shares.[6] The Commission

[5] Currency Trust Shares are securities issued by a trust that represent investors' discrete identifiable and undivided beneficial ownership interest in the non-U.S. currency deposited into the trust. The Exchange notes that the Commission has approved the listing and trading pursuant to UTP of other securities products for which the underlying interest was not a security trading on a regulated market. *See* Securities Exchange Act Release Nos. 51067 (January 21, 2005), 70 FR 3952–01 (January 27, 2005) (approving general standards for the listing and trading of Commodity-Based Trust Shares and trading of shares of the iShares COMEX Gold Trust pursuant to UTP); and 51245 (February 23, 2005), 70 FR 10731–01 (March 4, 2005) (approving the trading of shares of the streetTRACKS Gold Trust pursuant to UTP). Unlike Commodity-Based Trust Shares under PCXE Rule 8.201, which hold one or more physical commodities, Currency Trust Shares hold non-U.S. currency.

[6] *See* Securities Exchange Act Release No. 52843 (November 28, 2005), 70 FR 72486 (December 5, 2005) (order granting accelerated approval to SR–NYSE–2005–65) (''NYSE Order'').

previously approved the original listing and trading of the Shares by the New York Stock Exchange, Inc. (''NYSE'').[7]

The investment objective of the Trust is for the Shares to reflect the value of the euro. The Shares represent beneficial ownership interests in the net assets of the Trust consisting only of euro on demand deposit in a euro-denominated, interest-bearing account, less the expenses of the Trust.

(a) Currency Trust Shares

PCXE Rule 8.202 is intended to accommodate possible future listing and trading of trusts based on non-U.S. currencies in addition to the euro. Any new listing or trading of an issue of Currency Trust Shares will be subject to approval of a proposed rule change by the Commission pursuant to Section 19(b)(2)[8] of the Securities Exchange Act of 1934 (the ''Act'') and Rule 19b–4 thereunder.[9]

A description of the euro, foreign exchange industry, foreign currency regulation, operation of the Trust, and the Shares is set forth in the NYSE Order. Issuances of Shares will be made only in baskets of 50,000 Shares or multiples thereof (''Basket''). The Trust will issue and redeem the Shares on a continuous basis, by or through participants that have entered into participant agreements (each, an ''Authorized Participant'')[10] with the trustee, the Bank of New York (''Trustee''), at the net asset value (''NAV'') per Share next determined after an order to purchase a Basket is received in proper form.

When calculating NAV, the Trustee will value the euros held by the Trust on the basis of the day's announced Noon Buying Rate, as determined by the Federal Reserve Bank of New York. If the Noon Buying Rate is not announced by 2 p.m. (Eastern time (''ET'')), the Trustee will use the most recently announced Noon Buying Rate, unless the Trustee, in consultation with the Sponsor, determines to apply an alternative basis for evaluation as a result of extraordinary circumstances. The calculation methodology for the NAV is described in more detail in the NYSE Order.

Baskets will be issued in exchange for an amount of euros (''Basket Euro Amount'') based on the combined NAV per Share of the number of Shares included in the Baskets being created. The Basket Euro Amount and NAV will be determined by the Trustee ''as promptly as practicable'' after the Federal Reserve announces the Noon Buying Rate and published on the Trust's Web site on each Business Day.[11] Authorized Participants that wish to purchase a Basket must transfer the Basket Euro Amount to the Trust in exchange for a Basket. Baskets are then separable upon issuance into the Shares that will be traded on ArcaEx on a UTP basis.[12]

The Shares will not be individually redeemable but will only be redeemable in Baskets. To redeem, an Authorized Participant will be required to accumulate enough Shares to constitute a Basket (*i.e.*, 50,000 Shares). Authorized Participants that wish to redeem a Basket will receive the Basket Euro Amount in exchange for each Basket surrendered. The operation of the Trust and creation and redemption process is described in more detail in the NYSE Order.

(b) Dissemination of Information About the Fund Shares and Underlying Euro

Although the spot price of a foreign currency, such as the euro, is not disseminated over the facilities of Consolidated Tape Association (''CTA''), the last sale price for the Shares, as is the case for all equity securities traded on the Exchange, will be disseminated over the CTA. Investors may obtain on a 24-hour basis euro pricing information based on the euro spot price from various financial information service providers. The foreign exchange market is an over-the-counter dealer marketplace, and current spot prices are also generally available with bid/ask spreads from foreign exchange dealers. Complete real-time data for euro futures and options prices traded on the Chicago Mercantile Exchange (''CME'') and the Philadelphia Stock Exchange (''Phlx'') are also available by subscription from information service providers. The CME and Phlx also provide delayed futures and options information on current and past trading sessions and market news free of charge on their respective Web sites. There are a variety of other public Web sites that provide information on foreign currency and the euro, such as Bloomberg (*http://www.bloomberg.com/markets/currencies/eurafr_currencies.html*), which regularly reports current foreign exchange pricing for a fee. Other service providers include CBS Market Watch (*http://www.marketwatch.com/tools/stockresearch/globalmarkets*) and Yahoo! Finance (*http://finance.yahoo.com/currency*). Many of these sites offer price quotations drawn from other published sources, and as the information is supplied free of charge, it generally is subject to time delays.[13] The Exchange states that, like bond securities traded in the over-the-counter market with respect to which pricing information is available directly from bond dealers, current euro spot prices are also generally available with bid/ask spreads from foreign currency dealers. In addition, there is a considerable amount of euro price and euro market information available on public Web sites and through professional and subscription services. Current spot prices are also generally available from foreign exchange dealers.

The Trust's Web site at (*http://www.currencyshares.com*) (to which the Exchange will provide a hyperlink) will be publicly accessible at no charge and will contain the following information: (1) The euro spot price,[14] including the bid and offer and the midpoint between the bid and offer for the euro spot price, updated every 5 to 10 seconds; (2) an intraday indicative value (''IIV'') per Share calculated by multiplying the indicative spot price of euro by the quantity of euro backing each Share, on a 5 to 10-second delayed basis; (3) a 20-minute delayed basis indicative value, which is used for calculating premium/discount information; (4) premium/discount information, calculated on a 20-minute delayed basis; (5) the NAV of the Trust as calculated each Business Day; (6) accrued interest per Share; (7)

[7] *Id.*

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 240.19b–4.

[10] An ''Authorized Participant'' is a person, who at the time of submitting to the trustee an order to create or redeem one or more Baskets, (i) Is a registered broker-dealer, (ii) is a Depository Trust Company Participant or an Indirect Participant, and (iii) has in effect a valid Authorized Participant Agreement.

[11] Ordinarily no later than 2 p.m. (ET).

[12] Shares are separate and distinct from the underlying euro comprising the portfolio of the Trust. The Exchange expects that the number of outstanding Shares will increase and decrease as a result of in-kind deposits and withdrawals of the underlying euro.

[13] There may be incremental differences in the euro spot price among the various information service sources. While the Exchange believes the differences in the euro spot price may be relevant to those entities engaging in arbitrage or in the active daily trading of euro or foreign currency derivatives, the Exchange believes such differences are likely of less concern to individual investors intending to hold the Shares as part of a long-term investment strategy.

[14] The Trust Web site's euro spot price will be provided by The Bullion Desk (*http://www.thebulliondesk.com*), and the time of each calculation is noted on the Trust's Web site. The Exchange will provide a hyperlink to the Trust Web site. The Bullion Desk is not affiliated with the Trust, Trustee, Sponsor, Depository, Distributor, or the Exchange. In the event that the Trust's Web site should cease to provide this euro spot price information from an unaffiliated source and the intraday indicative value of the Shares, the NYSE will halt trading in the Shares and commence delisting proceedings for the Shares.

the daily Noon Buying Rate; (8) the Basket Euro Amount; and (9) the last sale price of the Shares as traded in the U.S. market, subject to a 20-minute delay. The euro spot price and IIV per Share are provided on an essentially real-time basis and are available during ArcaEx's early and late trading sessions, in addition to ArcaEx's core trading session.[15]

Between 12 p.m. and 2 p.m. (ET) each business day, the Trustee will calculate NAV and Basket Euro Amount based on the combined NAV per Share of the number of Shares included in the Baskets being created of the Shares and will post NAV on the Trust's Web site as soon as valuation of the euro held by the Trust is complete (ordinarily by 2 p.m. (ET)). Ordinarily, it will be posted no more than thirty minutes after the Noon Buying Rate is published by the Federal Reserve Bank of New York. In the NYSE Order, NYSE represented that all market participants will have access to this data at the same time and, therefore, no market participant will have a time advantage in using such data.

(c) Continued Listing and UTP Criteria

While the Exchange immediately seeks to UTP the Euro Currency Shares, the Exchange is also adopting general initial and continued listing standards applicable to all Currency Trust Shares in the event the Exchange were to list such Currency Trust Shares. In such an event, the Exchange would still file a Form 19b–4[16] to list such Currency Trust Shares. When the Exchange is the primary listing exchange, the Trust will be subject to the continued trading criteria under proposed PCXE Rule 8.202(e). In particular, the proposed criteria provides that the Currency Trust Shares may be removed from trading following the initial 12-month period from the date of commencement of trading of the Currency Trust Shares on the Exchange under any of the following circumstances:

- If the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of the Currency Trust Shares for 30 or more consecutive trading days;
- If the Trust has fewer than 50,000 Currency Trust Shares issued and outstanding;
- If the market value of all the Currency Trust Shares is less than $1,000,000;
- If the value of the applicable non-U.S. currency is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the Sponsor, Trust, Custodian or the Exchange or the Exchange stops providing a hyperlink on its Web site to any such unaffiliated applicable non-U.S. currency value;
- If the Indicative Trust Value (''ITV'' or ''IIV'') is no longer made available on at least a 15-second delayed basis; or
- If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

In addition, the Exchange will remove Currency Trust Shares from listing and trading upon termination of the Trust.

If the Exchange is only trading the Shares pursuant to UTP, then the Exchange will cease trading in the Shares if: (1) the primary market stops trading the Shares because of a regulatory halt similar to a halt based on PCXE Rule 7.12 and/or a halt because calculation and dissemination of the IIV and/or the underlying value (the spot price)[17] of the applicable non-U.S. currency has ceased; or (2) the primary market delists the Shares. Additionally, the Exchange may cease trading the Currency Trust Shares if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

(d) Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares of the Trust subject to the Exchange's existing rules governing the trading of equity securities. Trading in the Shares on the Exchange will occur in accordance with PCXE Rule 7.34(a). The minimum trading increment for Shares on the Exchange will be $0.01.

Further, the Exchange has proposed new PCXE Rules 8.202(g)—(i), which set forth certain restrictions on equity trading permit holders (''ETP Holders'') acting as registered Market Makers in Currency Trust Shares to facilitate surveillance. PCXE Rule 8.202(h) will require that the ETP Holder acting as a registered Market Maker in the Shares provide the Exchange with information relating to its trading in the applicable non-U.S. currency, options, futures or options on futures on such currency, or any other derivatives based on such currency. PCXE Rule 8.202(i) will prohibit the ETP Holder acting as a registered Market Maker in the Shares from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the applicable non-U.S. currency, options, futures or options on futures on such currency, or any other derivatives based on such currency (including the Shares). In addition, as stated above, PCXE Rule 8.202(g) will prohibit the ETP Holder acting as a registered Market Maker in the Shares from being affiliated with a market maker in the applicable non-U.S. currency, options, futures or options on futures on such currency, or any other derivatives based on such currency unless adequate information barriers are in place, as provided in PCXE Rule 7.26.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in euros, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule[18] or by the halt or suspension of the trading of futures contracts based on the euro. If the Exchange is the listing market for Currency Trust Shares, the Exchange will halt trading in the Shares if the Trust Web site (to which the PCX will hyperlink) ceases to provide: (1) The value of the euro updated at least every 15 seconds from a source not affiliated with the Sponsor, Trust, Custodian, or the Exchange (or this value is not displayed on the appropriate Web site), or (2) the IIV per Share updated at least every 15 seconds. If the Exchange is trading the shares pursuant to UTP, such as the Euro Currency Shares, the Exchange will cease trading the Shares if: (1) The primary market stops trading the Shares because of a regulatory halt similar to PCXE Rule 7.12 and/or a halt because of dissemination of the IIV and/or because the underlying spot price has ceased, or (2) the primary market delists

[15] Telephone Conference between David Strandberg, Attorney, Archipelago, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on February 6, 2006.

[16] 17 CFR 249.819.

[17] For the purposes of trading the Euro Shares pursuant to UTP, the applicable value would be the Euro Spot price provided by The Bullion Desk at *http://www.thebulliondesk.com* and at *http://www.currencyshares.com* (to which the Exchange will hyperlink). Telephone Conference between David Strandberg, Attorney, Archipelago, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on February 6, 2006.

[18] *See* PCXE Rule 7.12.

the shares. Because ArcaEx will be trading the Shares during its early and late trading sessions, when the primary market is closed, the Exchange will monitor the dissemination of the euro spot price and IIV during these trading sessions and cease trading the Shares if these values are not disseminated at least every 15 seconds and such values are not displayed on the Exchange Web site via a hyperlink with the Trust's Web site.[19]

Currency Trust Shares will be deemed ''Eligible Listed Securities,'' as defined in PCXE Rule 7.55, for purposes of the Intermarket Trading System (''ITS'') Plan and therefore will be subject to the trade through provisions of PCXE Rule 7.56, which require that ETP Holders avoid initiating trade-throughs for ITS securities.

The Commission exempted the Currency Trust Shares from the short sale requirements of Rule 10a–1 under the Act and gave no-action relief from Rule 200(g) of Regulation SHO under the Act.[20]

(e) Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products and shares of the streetTRACKS Gold Trust[21] to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange is able to obtain information regarding trading in the Shares, euro options, and euro futures through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG. Specifically, the Exchange can obtain such information from the Phlx in connection with euro options trading on the Phlx and from the CME and the London International Financial Futures Exchange (''LIFFE'') in connection with euro futures trading on those exchanges.

(f) Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Baskets; (2) PCXE Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares;[22] (3) how information regarding the IIV is disseminated; and (4) trading information. The Information Bulletin will also note to members their obligations regarding prospectus delivery requirements for the Shares. The Exchange notes that investors purchasing Shares directly from the Trust (by delivery of the Basket Euro Amount) will receive a prospectus. Exchange members purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses described in the Registration Statement, and that the number of euros required to create a Basket or to be delivered upon a redemption of a Basket may gradually decrease over time in the event that the Trust is required to sell euros to pay the Trust's expenses, and that if done at a time when the price of the euro is relatively low, it could adversely affect the value of the Shares. Finally, Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding the euro, and that the Commission has no jurisdiction over the trading of the euro.

2. Statutory Basis

The proposed rule change, as amended, is consistent with Section 6(b) of the Act[23] in general and furthers the objectives of Section 6(b)(5),[24] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest.

In addition, the Exchange believes that the proposal is consistent with Rule 12f–5 under the Act[25] because it deems the Shares to be equity securities, thus rendering the Shares subject to the Exchange's existing rules governing the trading of equity securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2005–123 on the subject line.

[19] Telephone Conference between David Strandberg, Attorney, Archipelago, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on February 6, 2006. In such case, the Exchange would immediately contact the Commission's staff.

[20] Currency Trust Shares are exempt from Rule 10a–1 under the Act permitting sales without regard to the ''tick'' requirements of Rule 10a–1 under the Act. Rule 10a–1(a)(1)(i) under the Act provides that a short sale of an exchange-traded security may not be effected (i) below the last regular-way sale price (an ''uptick'') or (ii) at such price unless such price is above the next preceding different price at which a sale was reported (a ''zero-plus tick''). *See* letter dated December 5, 2005 from James A. Brigagliano, Division of Market Regulation, Commission, to George T. Simon, Foley and Lardner.

[21] *See* streetTRACKS Gold approval order, *supra* note 5.

[22] The Exchange has proposed to amend PCXE Rule 9.2(a) (''Diligence as to Accounts'') to provide that ETP Holders, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the proposed rule amendment provides that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holders should make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives and any other information that they believe would be useful to make a recommendation. *See* Amendment No. 1 to SR–PCX–2005–115 (November 21, 2005). Telephone Conference between David Strandberg, Attorney, Archipelago, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on February 8, 2006.

[23] 15 U.S.C. 78s(b).

[24] 15 U.S.C. 78s(b)(5).

[25] 17 CFR 240.12f–5.

Paper comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–PCX–2005–123. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2005–123 and should be submitted on or before March 8, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[26] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[27] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,[28] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[29] The Commission notes that it previously approved the listing and trading of the Shares on the NYSE.[30] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[31] which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. PCXE rules deem the Shares to be equity securities, thus trading in the Shares will be subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[32] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

In connection with the Exchange's UTP of the Euro Shares, the Exchange will cease trading in the Shares if: (1) The primary market stops trading the Shares because of a regulatory trading halt similar to a halt based on PCXE Rule 7.12; or (2) the primary market stops trading the Shares because the value of the euro is no longer calculated or available on at least a 15 second delayed basis from a source unaffiliated with the Sponsor, Trust, Custodian or the Exchange, or the Exchange stops providing a hyperlink on its Web site to any such unaffiliated euro value; or the IIV is no longer made available on at least a 15 second delayed basis [33] or if such other event occurs or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable; or (3) if the primary market delists the Shares.

In support of the portion of the proposed rule change regarding UTP of the Euro Shares, the Exchange has made the following representations:

1. PCX has appropriate rules to facilitate transactions in this type of security in all trading sessions.

2. PCX surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange.

3. PCX will distribute an Information Bulletin to its members prior to the commencement of trading of the Shares on the Exchange that explains the terms, characteristics, and risks of trading such shares.

4. PCX will require a member with a customer who purchases newly issued Shares on the Exchange to provide that customer with a product prospectus and will note this prospectus delivery requirement in the Information Bulletin.

5. The Exchange will cease trading in the Shares if: (1) the primary market stops trading the shares because of a regulatory halt similar to a halt based on PCX Rule 7.12 and/or a halt because dissemination of the IIV and/or the underlying value (spot price on the euro) of the applicable non-U.S. currency has ceased;[34] or (2) the primary market delists the Shares.

This approval order is conditioned on PCX's adherence to these representations.

The Commission finds good cause for approving this proposed rule change, as amended, before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of these Shares on the NYSE is consistent with the Act.[35] The Commission presently is not aware of any issue that would cause it to revisit that earlier finding or preclude the trading of these funds on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposed rule change should benefit investors by creating, without undue delay, additional competition in the market for these Shares.

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[26] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[27] 15 U.S.C. 78f(b)(5).

[28] 15 U.S.C. 78*l*(f).

[29] Section 12(a) of the Act, 15 U.S.C. 78l(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange ''extends UTP.'' When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

[30] *See* NYSE Order, supra note 6.

[31] 17 CFR 240.12f–5.

[32] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[33] Because the Exchange is trading the Shares in its early and late trading sessions, the Exchange will ensure that trading of the Shares on ArcaEx will cease during these trading sessions if the unaffiliated value of the euro and the IIV per Share are no longer calculated and disseminated at least every 15 seconds during these trading sessions, or the Exchange stops providing a hyperlink on the Exchange's Web site to such unaffiliated euro value or IIV per Shares. Telephone Conference between David Strandberg, Attorney, Archipelago, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on February 6, 2006.

[34] *Id.*

[35] *See* NYSE Order, *supra* note 6.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–PCX–2005–123), is hereby approved on an accelerated basis.[36]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[37]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–2128 Filed 2–14–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53249; File No. SR–PCX–2005–138]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendments No. 1 and 2 Thereto To Amend the PCX's Rules Governing the Hours of Trading in Equity Options

February 7, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 16, 2005, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the PCX. On January 13, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Exchange filed Amendment No. 2 to the proposed rule change on January 31, 2006.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to approve the amended proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to amend its hours of trading for equity options as set forth in PCX Rule 7.1 and to make a corresponding clarifying change to PCX Rule 6.24(g). The Exchange proposes that these changes be implemented on February 13, 2006.[5] The text of the proposed rule change, as amended, is available on the PCX's Web site (*http://www.pacificex.com*), at the principal office of the PCX, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

According to the Exchange, the purpose of the proposed rule change, as amended, is to amend PCX Rule 7.1, Commentary .01 ''Trading Sessions'' to adjust the closing time for equity options trading on the PCX to 1 p.m. (Pacific time). In addition, the Exchange proposes to make a minor ''housekeeping'' change to PCX Rule 6.24(g) ''Exercise of Options Contracts'' so that the rule is consistent with the new closing time.[6] After the change becomes effective, the 1 p.m. (Pacific time) closing time for equity options will coincide with the closing time of the primary equity markets listing the stocks underlying PCX options. The primary exchanges generally close at 1 p.m. (Pacific time).

According to the Exchange, presently, listed options are traded on all options exchanges until 1:02 p.m. (Pacific time), while the underlying equities cease trading at 1 p.m. The extended time for options trading, which was implemented prior to electronic order entry and execution, provided an opportunity for all orders that were entered during market hours, especially those entered near the close, to be properly represented and executed if possible. The extended time also allowed options traders to respond to late reports of closing prices of underlying issues over the consolidated tape. Due to technological advances in options trading, most orders are no longer manually handled or traded on the floor. Customers and Market Makers have the ability to transact business in an all-electronic fashion with sub-second processing. Even though orders can still be traded via open outcry on the floor, these orders are limited in number and do not create a processing problem, even when entered near to the end of the day. Therefore, the need to provide an extended period of time in order to accommodate any orders that were unable to be processed during normal trading hours is no longer necessary. In addition, improvements in the processing and reporting of transactions have all but eliminated delays in the reporting of closing prices of underlying issues. Consequently, the need to continue trading options, while waiting for the correct closing price from the primary market, is no longer necessary.

The Exchange notes that if it were to unilaterally modify its closing time, the existence of dissimilar closing times applicable to the different options exchanges would likely lead to confusion for options investors and broker-dealers. It is the PCX's understanding that all options exchanges will make similar changes to their rules to change the closing time in equity options from 1:02 p.m. to 1 p.m. (Pacific time).[7] The options exchanges collectively have determined that they would implement this new closing time on February 13, 2006.[8]

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is

[36] 15 U.S.C. 78s(b)(2).

[37] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange provided additional discussion to clarify its proposed rule change.

[4] In Amendment No. 2, the Exchange requested that the implementation date for the new closing time be changed from February 1, 2006, as was originally proposed, to February 13, 2006.

[5] *Id.*

[6] The Exchange also proposes to delete certain language contained in PCX Rule 7.1, Commentary .01 which addresses the specific categories of Market Makers that are eligible to effect trades through the facilities of the Exchange. According to PCX, its rules governing trading by Market Makers, and the explanations of which types of Market Makers are eligible to trade either on the Floor of the Exchange or through the facilities of the Exchange are included in PCX Rule 6.32(a) entitled ''Market Makers Defined.'' The PCX believes that it is redundant to repeat this language in PCX Rule 7.1, and therefore proposes to delete it as part of this proposed rule change. *See* Amendment No. 1, *supra* note 3.

[7] The PCX notes that, although certain other exchanges are also proposing to change the closing time for narrow-based index options, the PCX's proposed rule change does not include a provision regarding narrow-based indexes. The Exchange represents that, at this time, the PCX does not trade options on narrow-based index products and does not have any plans to list options on narrow-based index products. PCX Rule 5.20(a) governs the closing time for transactions in index options. If in the future the PCX were to list options on narrow-based indexes, the PCX represents that it will, at that time, make any necessary changes to PCX Rule 5.20(a) regarding the closing time for options on narrow-based indexes. *Id.*

[8] *See* Amendment No. 2, *supra* note 4.

consistent with section 6(b) of the Act [9] in general, and furthers the objectives of section 6(b)(5) of the Act [10] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change, as amended.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form at (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2005–138 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–PCX–2005–138. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site(*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2005–138 and should be submitted on or before March 8, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,[12] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the Exchange believes that the need to continue trading options for some period of time after the close of trading in the underlying securities markets is no longer necessary because improvements in the processing and reporting of transactions have obviated the need to respond to late reports of closing prices over the consolidated tape in order to bring options quotes in line with the closing price of the underlying security. Because the two minute delay between the close of normal trading in equity options and the corresponding underlying equity markets is no longer necessary, the Commission believes that eliminating the delay is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets. Therefore, the Commission finds that it is consistent with the Act for the Exchange to amend its rules to change the close of normal trading hours in equity options from 1:02 p.m. (Pacific time) to 1 p.m. (Pacific time).

The Commission finds good cause for approving this proposed rule change, as amended, before the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission notes that all of the options exchanges have filed substantially similar proposals and seek to implement these industry-wide changes simultaneously on February 13, 2006.[13] For example, on December 20, 2005, the Commission published for comment in the **Federal Register** a similar proposed rule change submitted by the Chicago Board Options Exchange, Incorporated (''CBOE'').[14] The Commission received no comments on the CBOE's proposed rule change. The Commission believes that the PCX's proposed rule change, as amended, raises no new issues or novel regulatory questions. Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,[15] for approving the proposed rule change, as amended, prior to the thirtieth day after publication in the **Federal Register**. In addition, because the existence of dissimilar closing times among the options exchanges could lead to confusion for options investors and broker-dealers, the Commission finds good cause to accelerate approval of the proposed rule change, as amended, to enable the six options exchanges to simultaneously amend their hours of trading on an industry-wide basis in a uniform manner.[16]

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] *See* note 16, *infra.*

[14] *See* Securities Exchange Act Release No. 52949 (December 13, 2005), 70 FR 75513 (December 20, 2005) (SR–CBOE–2005–104). *See also* Securities Exchange Act Release No. 53055 (January 5, 2006), 71 FR 2279 (January 13, 2006) (SR–ISE–2005–58).

[15] 15 U.S.C. 78s(b)(2).

[16] The Commission notes that it is simultaneously approving similar proposals from the other options exchanges. *See* Securities Exchange Act Release Nos. 53244 (SR–Amex–2006–003); 53245 (SR–BSE–2006–02); 53246 (SR–CBOE–2005–104); 52348 (SR–ISE–2005–58); and 53247 (SR–Phlx–2006–01) (February 7, 2006).

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[17] that the proposed rule change and Amendments No. 1 and 2 thereto (SR–PCX–2005–138) be, and hereby are, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

J. Lynn Taylor,

Secretary.

[FR Doc. E6–2129 Filed 2–14–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53247; File No. SR–Phlx–2006–01]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendments No. 1 and 2 Thereto To Amend the Phlx's Rules Governing the Hours of Trading in Equity Options and Narrow-Based Index Options

February 7, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 4, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. On January 20, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Exchange filed Amendment No. 2 to the proposed rule change on January 31, 2006.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to approve the amended proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Phlx Rules 101, 1012, 1047, 1047A and 1101A and Phlx Floor Procedure Advice (''OFPA'') G–2 to indicate that equity options and narrow-based index options may trade until 4 p.m. and not 4:02 p.m. (e.s.t.). The Exchange proposes that these changes be implemented on February 13, 2006.[5] The text of the proposed rule change, as amended, is available on the Phlx's Web site (*http://www.phlx.com*), at the principal office of the Phlx, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

According to the Exchange, the purpose of the proposed rule change, as amended, is to amend Phlx Rules governing the hours of trading in equity options and narrow-based index options. Specifically, the Phlx proposes to amend its rules to change the close of normal trading hours in equity options and in narrow-based (industry) index options from 4:02 p.m. to 4 p.m. (e.s.t.). After the change, the time of the close of trading in these Phlx options will correspond to the normal time set for the close of trading on the primary exchanges listing the stocks underlying the Phlx options. The primary exchanges generally close at 4 p.m. (e.s.t.).

The Exchange notes that, in 1997, the closing time for equity options and narrow-based index options was changed from 4:10 p.m. to 4:02 p.m. (e.s.t.). The rationale to continue trading options for some limited period of time after the close of trading on the primary markets for the underlying securities was that the extended period allowed options traders to respond to late reports of closing prices over the consolidated tape. If the price of a late reported trade on an underlying security was substantially different from the previous reported price, the extended trading session would give options traders the opportunity to bring options quotes in line with the closing price of the underlying security.

However, because of improvements in the processing and reporting of transactions, the Phlx believes that there are no longer significant delays in the reporting of closing prices, and, therefore, a two minute session is no longer needed to trade options after the underlying securities close trading. Additionally, the Exchange believes that pricing aberrations can occur if an option is traded when the underlying stock is no longer trading, since there is a close relationship in the price of the underlying stock and the overlying option. As a result, the Phlx believes that it is difficult for the market to price options accurately when the underlying security is not trading.

At this time, the Exchange is not proposing to change the closing time of 4:15 p.m. (e.s.t.) for broad-based (market) index options because it does not believe that a significant news announcement by the issuer of one component stock of a broad-based index is likely to have a significant effect on the price of that broad-based index.[6] The Exchange recognizes, however, that indexes that are narrow-based may be subject to the same pricing problems as options on individual stocks[7] and, as noted above, proposes to change the relevant closing time to 4:00 p.m. (e.s.t.). Accordingly, the Phlx proposes to amend Phlx Rules 101, 1012, 1047, 1047A and 1101A and OFPA G–2 to change the references to times from 4:02 p.m. to 4 p.m. (e.s.t.) for equity options and certain index based options as described above.[8]

The Exchange notes that, if it or some but not all options exchanges were to unilaterally modify its closing time, the existence of dissimilar closing times applicable to the different options exchanges would likely lead to

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[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, replacing the original filing in its entirety, the Exchange made clarifying changes to the proposed rule text and its discussion.

[4] In Amendment No. 2, the Exchange requested that the implementation date for the new closing time be changed from February 1, 2006, as was originally proposed, to February 13, 2006.

[5] *Id.*

[6] Nor is the Exchange proposing to change the closing time of 4:15 p.m. (e.s.t.) for Exchange-Traded Fund Share Options. However, the Exchange is proposing technical changes in the noted rules to clarify that options on Exchange-Traded Fund Shares and broad-based index options may trade until 4:15 p.m. (e.s.t.).

[7] According to the Exchange, a significant news announcement on one component of such an index could have a significant effect on the index.

[8] In addition, the Exchange notes that the reference to a 4:10 p.m. closing time in Phlx Rule 101 will similarly be changed to 4:00 p.m. (e.s.t.).

confusion for options investors and broker-dealers. It is the Phlx's understanding that all of the options exchanges have determined to change their respective rules to revise the closing time in equity options and narrow-based index options from 4:02 p.m. to 4 p.m. (e.s.t.). The Phlx further understands that the options exchanges collectively have determined that they would implement this new closing time on February 13, 2006.[9]

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act[10] in general, and furthers the objectives of Section 6(b)(5) of the Act[11] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change, as amended.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form at (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2006–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2006–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site(*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2006–01 and should be submitted on or before March 8, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[13] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the Exchange believes that the need to continue trading options for some period of time after the close of trading in the underlying securities markets is no longer necessary because improvements in the processing and reporting of transactions have obviated the need to respond to late reports of closing prices over the consolidated tape in order to bring options quotes in line with the closing price of the underlying security. Moreover, the Exchange believes that allowing two additional minutes of options trading after trading on the underlying primary exchanges has ended may actually result in pricing aberrations. Because the two minute delay between the close of normal trading in equity options and narrow-based index options and the corresponding underlying equity markets is no longer necessary, the Commission believes that eliminating the delay is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets. Therefore, the Commission finds that it is consistent with the Act for the Exchange to amend its rules to change the close of normal trading hours in equity and narrow-based index options from 4:02 p.m. (e.s.t.) to 4 p.m. (e.s.t.).

The Commission finds good cause for approving this proposed rule change, as amended, before the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission notes that all of the options exchanges have filed substantially similar proposals and seek to implement these industry-wide changes simultaneously on February 13, 2006.[14] For example, on December 20, 2005, the Commission published for comment in the **Federal Register** a similar proposed rule change submitted by the Chicago Board Options Exchange, Incorporated (''CBOE'').[15] The Commission received no comments on the CBOE's proposed rule change. The Commission believes that the Phlx's proposed rule change, as amended, raises no new issues or novel regulatory questions. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[16] for approving the proposed rule change, as amended, prior to the thirtieth day after publication in the **Federal Register**. In

[9] *See* Amendment No. 2, *supra* note 4.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

[14] *See* note 17, *infra*.

[15] *See* Securities Exchange Act Release No. 52949 (December 13, 2005), 70 FR 75513 (December 20, 2005) (SR–CBOE–2005–104). *See also* Securities Exchange Act Release No. 53055 (January 5, 2006), 71 FR 2279 (January 13, 2006) (SR–ISE–2005–58).

[16] 15 U.S.C. 78s(b)(2).

addition, because the existence of dissimilar closing times among the options exchanges could lead to confusion for options investors and broker-dealers, the Commission finds good cause to accelerate approval of the proposed rule change, as amended, to enable the six options exchanges to simultaneously amend their hours of trading on an industry-wide basis in a uniform manner.[17]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change and Amendments No. 1 and 2 thereto (SR–Phlx–2006–01) be, and hereby are, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–2115 Filed 2–14–06; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10368 and # 10369]

California Disaster # CA–00029

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of California (FEMA–1628–DR) dated 02/03/2006.

Incident: Severe Storms, Flooding, Mudslides, and Landslides.

Incident Period: 12/17/2005 through 01/03/2006.

DATES: *Effective Date:* 02/03/2006.

Physical Loan Application Deadline Date: 04/04/2006.

Economic Injury (EIDL) Loan Application Deadline Date: 11/03/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing And Disbursement Center,14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 02/03/2006, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans):

Contra Costa; Del Norte; Lake Marin; Mendocino; Napa; Sacramento; Siskiyou; Solano; Sonoma.

Contiguous Counties (Economic Injury Loans Only):

California: Alameda; Amador; Colusa; El Dorado; Glenn; Humboldt; Modoc; Placer; San Joaquin; Shasta; Sutter; Tehama; Trinity; Yolo.

Oregon: Curry; Jackson; Josephine; Klamath.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.375
Homeowners Without Credit Available Elsewhere	2.687
Businesses With Credit Available Elsewhere	6.557
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.000
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10368B and for economic injury is 103690.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E6–2095 Filed 2–14–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 5305]

Defense Trade Advisory Group; Notice of Membership

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The U.S. Department of State's Bureau of Political-Military Affairs is accepting membership applications for the Defense Trade Advisory Group (DTAG).

DATE: The Bureau will accept applications for two weeks from the effective date of this notice.

FOR FURTHER INFORMATION CONTACT: Mary F. Sweeney, Office of Defense Trade Controls Management, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State, (202) 663–2865.

SUPPLEMENTARY INFORMATION: The DTAG was established as a continuing committee under the authority of 22 U.S.C. 2656 and the Federal Advisory Committee Act, 5 U.S.C. App. I *et seq.* (''FACA'').

The purpose of the DTAG is to provide the Bureau of Political-Military Affairs with a formal channel for regular consultation and coordination with U.S. private sector defense exporters and defense trade specialists on issues involving U.S. laws, policies, and regulations for munitions exports. The DTAG advises the Bureau on its support for and regulation of defense trade to help ensure that impediments to legitimate exports are reduced while the foreign policy and national security interests of the U.S. continue to be protected and advanced in accordance with the Arms Export Control Act (AECA), as amended. Major topics addressed by the DTAG include (a) Policy issues on commercial defense trade and technology transfer; (b) regulatory and licensing procedures applicable to defense articles, services, and technical data; (c) technical issues involving the U.S. Munitions List (USML); and (d) questions relating to actions designed to carry out the AECA and International Traffic in Arms Regulations (ITAR).

Members are appointed by the Assistant Secretary of State for Political-Military Affairs for the purpose of obtaining, from the point of view and perspective of industry and other non-governmental interest groups and stakeholders, substantive and technical expertise on defense trade and related issues. As such, DTAG members are drawn from a representative cross-section of U.S. defense industry, association, academic, and foundation personnel, including appropriate technical and military experts. All DTAG members shall be aware of the Department of State's mandate that arms transfers must further U.S. national security and foreign policy interests. DTAG members also shall be versed in the complexity of commercial defense trade and industrial competitiveness, and all members must be able to advise the Bureau on these matters. Further,

[17] The Commission notes that it is simultaneously approving similar proposals from the other options exchanges. *See* Securities Exchange Act Release Nos. 53244 (SR–Amex–2006–003); 53245(SR–BSE–2006–02); 53246 (SR–CBOE–2005–104); 53248 (SR–ISE–2005–58); and 53249 (SR–PCX–2005–138) (February 7, 2006).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

DTAG members are expected to use their expertise and provide candid advice, national security and foreign policy interests of the U.S. shall be the basis for all policy and technical recommendations.

DTAG members' responsibilities include:

• Service for a consecutive two-year term that may be renewed or terminated at the discretion of the Assistant Secretary of State for Political-Military Affairs (Membership shall automatically terminate for members who fail to attend three consecutive DTAG plenary meetings, which ideally are held bi-annually).

• Making recommendations in accordance with the DTAG Charter and the FACA.

• Making policy and technical recommendations within the scope of the U.S. commercial export control regime as mandated in the AECA, the ITAR, and appropriate directives.

Please note that DTAG members may not be reimbursed for travel, per diem, and other expenses incurred in connection with their duties as DTAG members.

How to apply: Applications in response to this notice must contain the following information: (1) Name of applicant; (2) affirmation of U.S. citizenship; (3) organizational affiliation and title, as appropriate; (4) mailing address; (5) work telephone number; (6) e-mail address; (7) resume; (8) summary of qualifications for DTAG membership. While a current security clearance is not mandatory for appointment, the ability to obtain and maintain a security clearance may be taken into account and will determine an appointee's access to some DTAG functions and activities (*e.g.*, disclosure to classified information, ''closed'' meetings, etc.).This information may be provided via two methods:

(1) E-mailed to the following address: *SweeneyMF@state.gov.* In the subject field, please write, ''DTAG Application''; or (2) Sent in hardcopy to the following address: Mary F. Sweeney, PM/DTCM, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political Military Affairs, U.S. Department of State, Washington, DC 20522–0112.

All applications must be postmarked by the fourteenth day from the effective date of this notice. Also, current DTAG members need not submit an application package in order to be considered for membership in 2006–2008.

Dated: February 8, 2006.

Michael T. Dixon,

Designated Federal Official, Defense Trade Advisory Group,Department of State.

[FR Doc. E6–2145 Filed 2–14–06; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 5266]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

SUMMARY: The Advisory Committee on Historical Diplomatic Documentation will meet in the Department of State, 2201 ''C'' Street NW., Washington, DC, March 6–7, 2006, in Conference Room 1406. Prior notification and a valid government-issued photo ID (such as driver's license, passport, U.S. government or military ID) are required for entrance into the building. Members of the public planning to attend must notify Chris Tudda, Office of the Historian (202–663–3054) no later than March 2, 2006 to provide date of birth, valid government-issued photo ID (such as driver's license, passport, U. S. government ID number/agency or military ID number/branch), and relevant telephone numbers. If you cannot provide one of the enumerated forms of ID, please consult Chris Tudda for acceptable alternative forms of picture identification.

The Committee will meet in open session from 1:30 p.m. through 3 p.m. on Monday, March 6, 2006, in Room 1105 to discuss declassification and transfer of Department of State records to the National Archives and Records Administration and the status of the *Foreign Relations* series. The remainder of the Committee's sessions from 3:15 p.m. until 4:30 p.m. on Monday, March 6, 2006, and 9 a.m. until 1 p.m. on Tuesday, March 7, 2006, will be closed in accordance with section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). The agenda calls for discussions of agency declassification decisions concerning the *Foreign Relations* series and other declassification issues. These are matters not subject to public disclosure under 5 U.S.C.552b(c)(1) and the public interest requires that such activities be withheld from disclosure.

Questions concerning the meeting should be directed to Marc J. Susser, ExecutiveSecretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663–1123,(e-mail *history@state.gov*).

Dated: February 7, 2006.

Marc Susser,

Executive Secretary, Department of State.

[FR Doc. E6–2156 Filed 2–14–06; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice 5304]

Advisory Committee on International Economic Policy; Notice of Open Meeting

The Advisory Committee on International Economic Policy (ACIEP) will meet from 1:30 p.m. to 4:30 p.m. on Thursday, March 9, 2006, in Room 1107, U.S. Department of State, 2201 C Street NW., Washington, DC. The meeting will be hosted by Assistant Secretary of State for Economic and Business Affairs E. Anthony Wayne and Committee Chairman R. Michael Gadbaw. The ACIEP serves the U.S. Government in a solely advisory capacity concerning issues and problems in international economic policy. Items on the agenda for this meeting include: (1) U.S.-China Economic Relations and (2) U.S. International Investment Policy.

This meeting is open to the public as seating capacity allows. Entry to the building is controlled; to obtain pre-clearance for entry, members of the public planning to attend should provide, by March 6, their name, professional affiliation, social security number (or other identification, such as driver's license number), date of birth, and citizenship to Dana Crute by fax (202) 647–5936, e-mail (*crutedf@state.gov*), or telephone (202) 647–0847. One of the following forms of valid photo identification will be required for admission to the State Department building: U.S. driver's license, passport, or U.S. Government identification card. Enter the Department of State from the C Street lobby. In view of escorting requirements, non-Government attendees should plan to arrive not less than 15 minutes before the meeting begins.

For additional information, contact David Freudenwald, Office of Economic Policy and Public Diplomacy, Bureau of Economic and Business Affairs, at (202) 647–2231 or *freudenwalddj@state.gov.*

Dated: February 8, 2006.

Laura Faux-Gable,

Office Director, Office of Economic Policy Analysis and Public Diplomacy, Department of State.

[FR Doc. E6–2149 Filed 2–14–06; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 5263]

Announcement of Meetings of the International Telecommunication Advisory Committee

SUMMARY: This notice announces the program of International Telecommunication Advisory Committee meetings to prepare for meetings of the Organization for Economic Co-operation and Development Committee for Information, Computer & Communications Policy (ICCP), various International Telecommunication Union Telecommunication Standardization Sector (ITU–T) and Radiocommunication Sector (ITU–R) Study Groups, and the Organization of American States Inter-American Telecommunication Commission (CITEL) through July 2006.

The International Telecommunication Advisory Committee (ITAC) will meet to prepare for the OECD ICCP March meeting on February 27, 2006 2–4 p.m. at Verizon Communications, 1300 Eye Street, Washington, DC determined.

The International Telecommunication Advisory Committee (ITAC) will meet to prepare for various ITU–R Study Group meetings continuously by e-mail through the end of July 2006. People desiring to participate in this activity should contact the secretariat at *minardje@state.gov* or 202–647–2592 for directions.

The International Telecommunication Advisory Committee (ITAC) will meet to prepare for ITU–T SG16 (Multimedia Terminals, Systems & Applications) on March 16, 2006 in Chantilly, Virginia at a location and time to be determined.

The International Telecommunication Advisory Committee (ITAC) will meet to prepare for ITU–T SG17 (Security, Languages, & Telecommunication Software) on March 29, 2006 2–4 p.m. in Washington, DC at a location to be determined.

The International Telecommunication Advisory Committee (ITAC) will meet to prepare for ITU–T Telecommunication Sector Advisory Group on April 6, May 18, June 8 and June 15, 2006 in Washington, DC all 2–4 p.m. at a location to be determined.

The International Telecommunication Advisory Committee (ITAC) will meet to prepare for ITU–T SG2 (Operational aspects of service provision, networks and performance) on April 11, 2006 in Washington, DC 10–noon at a location to be determined.

The International Telecommunication Advisory Committee (ITAC) will meet to prepare for CITEL PCC.I (Telecommunication) on April 11 and May 11, 2006 all 2–4 p.m. in Washington, DC at a location to be determined.

The International Telecommunication Advisory Committee (ITAC) will meet to prepare for ITU–T SG9 (Integrated broadband cable networks and television and sound transmission) on April 20, 2006 2–4 p.m. in Washington, DC at a location to be determined.

The International Telecommunication Advisory Committee (ITAC) will meet to prepare for ITU–T SG4 (Telecommunication Management) on May 4, 2006 in Chantilly, VA at a time and location to be determined.

The International Telecommunication Advisory Committee (ITAC) will meet to prepare for ITU–T SG3 (Tariff and accounting principles including related telecommunication economic and policy issues) on May 18, 2006 10–noon, May 25 and June 1, 2006 2–4 p.m. in Washington, DC at a location to be determined.

The International Telecommunication Advisory Committee (ITAC) will meet to prepare for ITU–T SG13 (Next Generation Networks), SG11 (Signalling requirements and protocols), and SG19 (Mobile Telecommunication Networks) on June 30, 2006, in Savannah, GA (following and co-located with ATIS PTSC/PRQC meetings) at a location to be determined.

These meetings are open to the public. Particulars on meeting location and times, and information on conference bridges is available from the secretariat *minardje@state.gov,* telephone 202–647–2592.

Dated: February 7, 2006.

Anne D. Jillson,

Foreign Service Officer, International Communications & Information Policy, Department of State.

[FR Doc. E6–2157 Filed 2–14–06; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Request to Release Airport Property at the City-County Airport, Madras, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Request to Release Airport Property.

SUMMARY: The FAA proposed to rule and invite public comment on the release of land at City-County Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21), now 49 U.S.C. 47107(h)(2).

DATES: Comments must be received on or before March 17, 2006.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. J. Wade Bryant, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Seattle Airports District Office, 160 Lind Avenue, SW., Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to The Honorable Rick Allen, Mayor of City of Madras, at the following address: The Honorable Rick Allen, Mayor, City of Madras, 71 SE D Street, Madras, OR 97741.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Watson, OR/ID Section Supervisor, Federal Aviation Administration, Northwest Mountain Region, Seattle Airports District Office, 1601 Lind Avenue, SW., Suite 250, Renton, Washington, 98055–4056.

The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the requests to release property at the City-County Airport under the provisions of the AIR 21 (49 U.S.C. 47107(h)(2)).

On January 31, 2006, the FAA determined that the request to release property at City-County Airport submitted by the airport meets the procedural requirements of the Federal Aviation Administration. The FAA may approve the request, in whole or in part, no later than March 17, 2006.

Brief Overview of the Request

City-County Airport is proposing the release of approximately 4.75 acres of airport property so the property can be sold to the business wishing to locate in the airport industrial park. The revenue made from this sale will be used toward Airport Capital Improvement.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon appointment and request, inspect the application, notice and other documents germane to the application in person at City-County Airport.

Issued in Renton, Washington, on January 31, 2006.

J. Wade Bryant,

Manager, Seattle Airports District Office.

[FR Doc. 06–1425 Filed 2–14–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Health Authority Notification

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The FAA is publishing this notice to inform hospitals and other health care organizations of its status as a ''public health authority'' under the medical privacy requirements of the Health Insurance Portability and Accountability Act of 1996.

FOR FURTHER INFORMATION CONTACT: Charles DeJohn, CAMI, Aeromedical Research Division, Federal Aviation Administration, CAMI Building, AAM–600, RM #112A, P.O. Box 25082, Oklahoma City, OK 73125. 405–954–5519.

SUPPLEMENTARY INFORMATION: The Health Insurance Portability and Accountability Act of 1996 (HIPAA) was enacted to improve the portability and continuity of health insurance coverage in the group and individual markets, to combat waste, fraud, and abuse in health insurance and health care delivery, to promote the use of medical savings accounts, to improve access to long-term care services and coverage to simplify the administration of health insurance, and for other purposes (Pub. L. 104–191, 110 Stat. 196 (1996)). The administration simplification provisions (HIPAA, Title II) require the Department of Health and Human Services (HHS) to establish national medical privacy regulations to protect the privacy of individually identifiable electronic health information. These regulations (the ''Privacy Rule'') were published by the HHS on December 28, 2000, and established the standards to identify the rights of individuals who are the subjects of ''protected health information,'' which is defined as individually-identifiable health information; provide procedures for the exercise of those rights; and define the general rules and disclosures of protected health information. (45 CFR 160–164).

Beginning April 14, 2003, the Privacy Rule prohibits health plans, health care clearinghouses and selected health care providers from using or disclosing protected health information, except as permitted by certain exceptions (45 CFR 164.502). Under one exception, the Privacy Rule permits the disclosure of protected information to public health authorities legally authorized to ''collect or receive the information for the purpose of preventing or controlling disease, injury, or disability'' (45 CFR 164.512(b)(1)(i)) A ''public health authority'' includes ''an agency or authority of the United States * * * that is responsible for public health matters as part of its official mandate'' (45 CFR 164.501). Examples of public health matters include the reporting of disease, injury, or vital events; and public health surveillance, public health investigations or public health interventions (45 CFR 164.512(b)(1)(i)).

Guidance issued by HHS titled ''Disclosures for Public Health Activities (45 CFR 164.512(b))'' on December 3, 2002, and revised on April 3, 2003, further addressed the issue of disclosure to public health authorities. The guidance states that:

> The HIPAA Privacy Rule recognizes the legitimate need for public health authorities and others responsible for ensuring public health and safety to have access to protected health information to carry out their public health mission. The Rule also recognizes that public health reports made by covered entities are an important means of identifying threats to the health and safety of the public at large, as well as individuals. Accordingly, the Rule permits covered entities to disclose protected health information without authorization for specified public health purposes. (See: *http://www.hhs.gov/ocr/hipaa/publichealth.pdf.pdf*).

The FAA has statutory responsibility for promoting safe flight of civil aircraft in air commerce. The scope of this statutory responsibility includes the performance of medical research intended to protect the occupants of aircraft from risks and hazards that are attendant to flight (49 U.S.C. 44701, 44703, 44507). The Administrator has delegated to the Federal Air Surgeon the responsibility for this research, which is conducted at the Civil Aerospace Medical Institute (CAMI). The medical and crash injury research conducted at CAMI requires collection and analysis of relevant data which the FAA relies upon to establish safety standards for such issues as cabin materials, seat design and strength, and environmental control. These research functions are conducted in the interests of public health and the improvement of aviation safety for the traveling public. Public health authority status will allow CAMI to efficiently obtain medical information necessary to fulfill its statutory mission.

In light of the statutory duties described above, the FAA has determined that it is a public health authority within the meaning of the Privacy Rule. As a public health authority, FAA is entitled to receive protected health information from hospitals and other health care organizations, without written consent or authorization because disclosures of protected health information to a public authority are permitted disclosures under the Privacy Rule (45 CFR 164.502(a)(1)(vi)).

Issued in Washington, DC on February 10, 2006.

Nicholas A. Sabatini,

Associate Administrator for Aviation Safety, AVS–1.

[FR Doc. 06–1424 Filed 2–14–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

FAA (Aircraft Certification Service) Information Sharing and Listening Session

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting to discuss various FAA rotorcraft safety initiatives and to gather any relevant information that will help to reduce general aviation rotorcraft accidents. This meeting supports the FAA's Flight Plan initiative to reduce general aviation accidents.

DATES: The meeting will be on February 28, 2006, 1–3:30 p.m. CST.

ADDRESSES: The meeting is in conjunction with Heli-Expo at the Dallas Convention Center, Conference Room D167, 650 South Griffin Street, Dallas, TX 75202; telephone (214) 939–2700.

FOR FURTHER INFORMATION CONTACT: Jorge Castillo, Rotorcraft Standards Staff, ASW–111, 2601 Meacham Boulevard, Fort Worth, TX 76137, telephone (817) 222–5127, or by e-mail at *Jorge.R.Castillo@faa.gov*.

SUPPLEMENTARY INFORMATION: The meeting is announced pursuant to 49 U.S.C. 40113 and 49 U.S.C. 44701 to take actions the FAA considers necessary in order to enhance safety in air commerce and the DOT policies and procedures to seek public participation in that process.

This meeting is part of the Rotorcraft Directorate's initiative and supports one of the top safety objectives of the FAA 2006–2010 Flight Plan to reduce the number of fatal accidents in general aviation. At this meeting, we will brief you on some of the FAA's initiatives intended to reduce rotorcraft accidents, including installing Health Usage Monitoring Systems (HUMS) and using Night Vision Imaging Systems (NVIS).

You will have an opportunity to propose safety-enhancing recommendations and to recommend how the FAA should implement strategies that will help reduce rotorcraft accidents. Attendance is open to all interested persons but will be limited to the space available.

Issued in Fort Worth, Texas, on February 8, 2006.

Sharon Y. Miles,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E6–2179 Filed 2–14–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 05–04–C–00–BOS To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at General Edward Lawrence Logan International Airport, East Boston, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at General Edward Lawrence Logan International Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before date, which is 30 days after date of publication in the **Federal Register**.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ms. Priscilla Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Craig Coy, CEO and Executive Director of the Massachusetts Port Authority at the following address: One Harborside Drive, Suite 200S, East Boston, Massachusetts 02128.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Massachusetts Port Authority under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Priscilla Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (781) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at General Edward Lawrence Logan International Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 4, 2006, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Massachusetts Port Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 5, 2006.

The following is a brief overview of the application.

Proposed charge effective date: February 1, 2011.

Proposed charge effective date: February 1, 2016.

Level of the proposed PFC: $3.00.

Total estimated PFC revenue: $112,298,000.

Brief description of proposed project(s): Construct Elevated Walkways.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $180,718,000.

Brief description of proposed project(s): Residential sound insulation, construction of runway 14–32 and associated taxiways, southwest taxiway improvements, runways 4L–22R and 4R–22L improvements, reconstruction of aprons and alleyways at terminal B, C, and D, security improvements, centerfield taxiway construction, airfield drainage improvements and airfield perimeter road improvements.

Class or classes of air carriers, which the public agency has requested, not be required to collect PFCs: Non-Schedules/On-Demand Air Carriers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Massachusetts Port Authority.

Issued in Burlington, Massachusetts on February 1, 2006.

LaVerne F. Reid,

Manager, Airports Division, New England Region.

[FR Doc. 06–1426 Filed 2–14–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In January 2006, there were seven applications approved. This notice also includes information on one application, approved in December 2005, inadvertently left off the December 2005 notice. Additionally, six approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: City of Monroe, Louisiana.

Application Number: 06–02–C–00–MLU.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $720,000.

Earliest Charge Effective Date: February 1, 2006.

Estimated Charge Expiration Date: September 1, 2007.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Project Approved for Collection and Use: Passenger terminal scoping and planning study.

Decision Date: December 20, 2005.

FOR FURTHER INFORMATION CONTACT: Patrick Vaught, Southwest Region Airports Division, (817) 222–5638.

Public Agency: Texas A&M University, College Station, Texas.

Application Number: 06–05–C–00–CLL.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $799,557.

Earliest Charge Effective Date: January 1, 2007.

Estimated Charge Expiration Date: March 1, 2010.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Construct north and south common use parking apron.

Relocate airfield guidance signs.

Reconstruction of runway 4/22.

Taxiway reconstruction, taxiways A, D, and H.

Runway 16/34 safety area enhancements.

Terminal roadway signage.

Airfield lighting.

PFC application and administration fees.

Decision Date: January 4, 2006.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest region Airports Division, (817) 222–5614.

Public Agency: Port Authority of New York and New Jersey, New York, New York.

Applications Number: 05–05–C–00–EWR, 05–05–C–00–JFK, and 05–05–C–00–LGA.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $1,555,886,059.

Charge Effective Date: November 1, 2001.

Earliest Charge Effective Date for $4.50 Collections: April 1, 2006.

Estimated Charge Expiration Date: March 1, 2011.

Classes of Air Carriers Not Required to Collect PFC's:

(1) Nonscheduled/on-demand air carriers; (2) commuters or small certificated air carriers; and (3) all other nonscheduled charter carriers.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements each of the three collecting airports: Newark Liberty International Airport (EWR); John F. Kennedy International Airport (JFK); and LaGuardia Airport (LGA).

Brief Description of Projects Approved for Collection at EWR, JFK, and LGA and Use at JFK at a $4.50 PFC Level:

Relocation and rehabilitation of taxiway A and rehabilitation of taxiway B.

Reconstruction and strengthening of taxiways A and B bridges.

Planning for the rehabilitation and widening of runway 13R.

Perimeter security.

Reimbursement for mandated security costs from 9/11/2001 to 9/30/2002.

Brief Description of Projects Approved for Collection at EWR, JFK, and LGA and Use at LGA at a $4.50 PFC Level:

Runways 13/31 and 4/22 rehabilitation.

Perimeter security.

Crisis command center/police and aircraft rescue and firefighting facility.

Reimbursement for mandated security costs from 9/11/2001 to 9/30/2002.

Brief Description of Projects Approved for Collection at EWR, JFK, and LGA and Use at EWR at a $4.50 PFC Level:

Runway extension drainage infrastructure.

Airfield expansion.

Perimeter security.

Planning for expanded terminal A.

Modernization of terminal B.

Reimbursement for mandated security costs from 9/11/2001 to 9/30/2002.

Brief Description of Project Partially Approved for Collection at EWR, JFK, and LGA and Use at JFK at a $4.50 PFC Level:

Runway 13L/31R rehabilitation.

Determination: Partially approved for collection and use. The requested amount in the application was based on a preliminary cost estimate. The Port Authority, at the FAA's request, later submitted a detailed cost estimate that was based on more recent information and so the FAA approved an amount based on the more recent cost estimate.

Brief Description of Project Partially Approved for Collection at EWR, JFK, and LGA and Use at EWR at a $4.50 PFC Level:

Runway/taxiway pavement rehabilitation: runway 4L/22R, runway 4R/22L, and taxiway P.

Determination: Partially approved for collection and use. The requested amount in the application was based on a preliminary cost estimate. The Port Authority, at the FAA's request, later submitted a detailed cost estimate that was based on more recent information and so the FAA approved an amount based on the more recent cost estimate.

Brief Description of Project Approved for Collection at EWR, JFK, and LGA for Future Use at JFK at a $4.50 PFC Level:

Construction of taxiway A connector.

Brief Description of Projects Approved for Collection at EWR, JFK, and LGA for Future Use at EWR at a $4.50 PFC Level:

Upgrade navigational aids, runways 22R and 22L.

Upgrade navigational aids, runway 4L.

Improvements to runway safety areas.

Brief Description of Projects Approved for Collection at EWR, JFK, and LGA and Use at JFK at a $3.00 PFC Level:

Infrastructure study and preliminary design to accommodate a new terminal.

Central terminal area light rail system component.

Jamaica—JFK light rail system component.

Brief Description of Project Approved for Collection at EWR, JFK, and LGA and Use at LGA at a $3.00 PFC Level:

Central terminal building modernization feasibility study.

Brief Description of Project Approved for Collection at EWR, JFK, and LGA and Use at EWR at a $3.00 PFC Level:

Vertical circulation improvements in terminal A.

Brief Description of Project Partially Approved for Collection at EWR, JFK, and LGA and Use at EWR at a $3.00 PFC Level:

North area roadway improvements.

Determination: Partially approved for collection and use. The requested amount in the application included two components, a toll plaza and a bus shelter, which have been determined to be ineligible as the FAA was unable to determine that the toll plaza and bus shelter impeded the construction of this project and, thus, required relocation.

Brief Description of Project Approved for Collection at EWR, JFK, and LGA for Future Use at LGA at a $3.00 PFC Level:

Central terminal building modernization planning and engineering.

Decision Date: January 13, 2006.

FOR FURTHER INFORMATION CONTACT: John Dermody, New York Airports District Office, (516) 227–3869.

Public Agency: Pennsylvania State University, State College, Pennsylvania.

Application Number: 06–04–C–00–UNV.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $1,735,524.

Earliest Charge Effective Date: August 1, 2006.

Estimated Charge Expiration Date: March 1, 2009.

Class of Air Carriers Not Required to Collect PFC's:

Air taxi operating under Part 135 and filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at University Park Airport.

Brief Description of Projects Approved for Collection and Use:

Updated airport layout plan (for proposed air traffic control tower).

Acquire snow removal equipment (18-foot high speed broom with carrier unit).

Construct terminal building, phase I.

Acquire interactive training system.

Acquire and install security access control equipment.

Update terminal area plan.

Modify terminal building, phase II.

Update airport master plan (conduct geographic information system).

Acquisition of an airport vehicle.

Acquire runway deicing equipment.

Construct air traffic control tower, phase I design.

Brief Description of Project Approved for Collection:

Acquire land (Spearly, approximately 205 acres) for runway 06 approach protection.

Brief Description of Disapproved Project:

Prepare airport minimum standards and update airport rules and regulations.

Determination: This project is not PFC-eligible in accordance with § 158.15.

Decision Date: January 11, 2006.

FOR FURTHER INFORMATION CONTACT: Lori Ledebohm, Harrisburg Airports District Office, (717) 730–2835.

Public Agency: Rock Springs—Sweetwater County Airport Board, Rock Springs, Wyoming.

Application Number: 06–02–C–00–RKS.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $226,907.

Earliest Charge Effective Date: April 1, 2006.

Estimated Charge Expiration Date: November 1, 2010.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Rehabilitate airfield signs, install runway end identifier lights and runway distance remaining signs.

Reconstruct general aviation apron, phase 1.

Reconstruct general aviation apron, phase 2.

Rehabilitate runway 9/27, design.

Rehabilitate runway 9/27, phase 1.

Rehabilitate runway 9/27, phase 2.

Install wildlife fence, grade runway safety area.

Acquire aircraft rescue and firefighting vehicle.

Rehabilitate taxiway lights, install visual aids and gates.

Acquire snow removal equipment.

Airport master plan.

Rehabilitate portion of taxiway A, phase 1.

Rehabilitate portion of taxiway A, phase 2, and rehabilitate taxiway C and runway lights.

Rehabilitate commercial apron, design.

Rehabilitate commercial apron, partial.

Decision Date: January 13, 2006.

FOR FURTHER INFORMATION CONTACT: Chris Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: City of Sioux City, Iowa.

Application Number: 06–05–C–00–SUX.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $711,255.

Earliest Charge Effective Date: May 1, 2006.

Estimated Charge Expiration Date: March 1, 2010.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Terminal concept plan.

Acquire and modify loading bridges.

Mark runways and taxiways.

Construct terminal entrance road.

Acquire snow removal equipment.

Rehabilitate aircraft parking apron.

Acquire land for runway 13 runway protection zone.

Acquire replacement snow plow truck and front end loader.

Extend taxiway C (including perimeter road).

Improve runway 17/35 safety area.

Acquire replacement snow blower.

Decision Date: January 18, 2006.

FOR FURTHER INFORMATION CONTACT: Lorna Sandrige, Central Regional Airports Division, (816) 329–2641.

AMENDMENTS TO PFC APPROVALS

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
94–03–C–03–OAK, Oakland, CA	12/30/05	$13,546,741	$13,161,745	09/01/96	09/01/96
95–04–U–02–OAK, Oakland, CA	12/30/05	NA	NA	09/01/96	09/01/96
96–01–C–01–BIS, Bismarck, ND	01/17/06	336,388	349,092	07/01/97	07/01/97
98–02–C–02–BIS, Bismarck, ND	01/17/06	1,461,653	1,342,095	04/01/02	04/01/02
01–03–C–02–BIS, Bismarck, ND	01/17/06	925,522	998,006	03/01/04	02/01/04
93–01–C–03–PSC, Pasco, WA	01/18/06	3,630,945	2,352,361	05/01/02	05/01/02

Issued in Washington, DC on February 9, 2006.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 06–1428 Filed 2–14–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2005–22997]

RIN 2120–AI23

Reduction of Fuel Tank Flammability in Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of and request for comments on the report, ''Assessment of the Effectiveness of Special Federal Aviation Regulation (SFAR) 88 Airworthiness Directives (ADs) in Preventing Ignition Sources.'' The FAA is making available this report, which supports its Notice of Proposed Rulemaking (NPRM) entitled ''Reduction of Fuel Tank Flammability in Transport Category Airplanes.'' The report can be found at the DOT Docket Web site, at *http://dms.dot.gov*, Docket No. FAA–2005–22997.

DATES: Comments must be received on or before March 23, 2006.

ADDRESSEES: You may send comments, identified by Docket No. FAA–2005–22997, using any of the following methods:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Fax: 1–202–493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael E. Dostert, FAA, Propulsion/Mechanical Systems Branch (ANM–112), Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2132, facsimile (425) 227–1320; e-mail: *mike.dostert@faa.gov*.

Comments Invited

Interested parties are invited to submit comments on the report. Commenters must submit comments to an address specified above. The FAA will consider all communications received on or before the closing date for comments.

Discussion

The FAA commissioned the Sandia National Laboratories to perform an independent study on the effectiveness of ignition source prevention measures in airplane fuel tanks. Sandia National Laboratories documented the results of its study in a technical report titled ''Assessment of the Effectiveness of Special Federal Aviation Regulation (SFAR) 88 Airworthiness Directives (ADs) in Preventing Ignition Sources.'' This report supports the FAA's NPRM (published on November 23, 2005 (70 FR 10922)) that proposes to require operators and design approval holders of transport category airplanes to reduce fuel tank flammability exposure, which, in combination with previous ignition source minimization, would greatly reduce the chances of a catastrophic fuel tank explosion.

The report is currently undergoing a peer review, as required by the Office of Management and Budget's ''Final Information Quality Bulletin for Peer Review.'' The FAA will add the report of the peer review to the public docket and make it available for public comment.

Issued in Washington, DC, on February 9, 2006.

Anthony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. E6–2181 Filed 2–14–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–23598]

Notice of Request for Comments on Extension of a Currently Approved Collection of Information: Inspection, Repair, and Maintenance

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval. The ICR describes a currently approved information collection activity and its expected cost and burden. On October 19, 2005, FMCSA published a **Federal Register** notice allowing for a 60-day comment period on the ICR. No comments were received.

DATES: Please send your comments by March 17, 2006. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, *Attention:* DOT/FMCSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey Van Ness, (202) 366–8802, Vehicle and Roadside Operations Division (MC–PSV), Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Inspection, Repair, and Maintenance.

OMB Control Number: 2126–0003.

Type of Request: Renewal of an existing information collection.

Background: The Secretary of Transportation (Secretary) is authorized under the provisions of 49 U.S.C. 31502 to prescribe requirements for qualifications and maximum hours-of-service of employees, and safety and equipment standards for motor carriers that operate commercial motor vehicles (CMVs) in interstate commerce. Under 49 U.S.C. 31136, the Secretary also has authority to prescribe regulations to ensure that CMVs are maintained, equipped, loaded and operated safely; and under 49 U.S.C. 31143 to establish standards for annual or more frequent inspections of CMVs under the provisions of U.S.C. 31142. The Secretary's authority to establish improved standards or methods to ensure brakes and brake systems of CMVs are inspected by appropriate employees and maintained properly is provided under 49 U.S.C. 31137(b).

Motor carriers must maintain, or require maintenance of, records documenting the inspection, repair and maintenance activities performed on their owned and leased vehicles. There are no prescribed forms to meet these requirements. Electronic recordkeeping is allowed (*See* 49 CFR 390.31(d)). Documents requiring a signature must be capable of replication (*i.e.,* photocopy, facsimile, *etc.*) in such form that will provide an opportunity for signature verification upon demand. If computer records are used, all of the relevant data on the original documents must be included in the electronic transmission for the records to be valid. The records are used by the FMCSA and its representatives to verify motor carriers' compliance with the inspection, repair, and maintenance standards in 49 CFR part 396 of the Federal Motor Carrier Safety Regulations (FMCSRs).

Respondents: Motor carriers, and commercial motor vehicle drivers.

Estimated Number of Respondents: 678,535 motor carriers.

Frequency of Response: Annual and on occasion.

Estimated Total Annual Burden: 59,093,244. Adjustments from the October 19, 2005, **Federal Register** notice reflect that FMCSA needs to correct several arithmetic errors made in computing burden estimates in the past, primarily for computing burden estimates for the driver-vehicle inspection report. In addition, 325,795 interstate motor carriers operate one CMV only, and thus are not required to prepare daily driver vehicle inspection reports. Consequently, these carriers are no longer included in the computation

of burden hours relating to: (a) The Certification of Corrective Action, and (b) the Review and Signature of Driver Vehicle Inspection Reports. These differences, in aggregate, total 24,294,988 burden hours.

We particularly request comments on: Whether the collection of information is necessary for FMCSA to meet its goal of reducing truck crashes and its usefulness to this goal; the accuracy of the estimate of the burden of the information collection; ways to enhance the quality, utility and clarity of the information collected; and ways to minimize the burden of the collection of information on respondents, including using automated collection techniques or other forms of information technology.

Issued on: February 9, 2006.

Annette M. Sandberg,

Administrator.

[FR Doc. E6–2169 Filed 2–14–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–23470]

Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs)

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for comments.

SUMMARY: This notice seeks comments about what revisions are needed for the Model Specifications for Breath Alcohol Ignition Interlock Devices (Model Specifications) published by the National Highway Traffic Safety Administration (NHTSA) in the **Federal Register** on April 7, 1992 (57 FR 11772). Model specifications are guidelines for the performance and testing of breath alcohol ignition interlock devices (BAIIDs). These devices are designed to prevent a driver from starting a motor vehicle when the driver's breath alcohol content (BrAC) is at or above a set alcohol level. Because changes may be necessary after more than 13 years of experience with this technology, NHTSA is seeking comments regarding the need for revisions to the model specifications.

DATES: Written comments may be submitted to this agency and must be received by April 17, 2006.

ADDRESSES: Comments should refer to the docket number and be submitted (preferably in two copies) to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System (DMS) Web site at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the Docket number of this document. You may call the docket at (202) 366–9324. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. James F. Frank, Office of Research & Technology (NTS–131), National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: (202) 366–5593.

SUPPLEMENTARY INFORMATION: On April 24, 1991 (56 FR 18857), NHTSA issued a notice and request for comments on proposed Model Specifications for Breath Alcohol Ignition Interlock Devices. BAIIDs are breath alcohol test instruments designed to allow a driver to start a motor vehicle when his/her BrAC is below a set alcohol level; conversely, the devices are designed to prevent a driver from starting a motor vehicle when his/her BrAC is at or above the set alcohol level.

As explained in the April 1991 notice, a number of States passed laws authorizing the use of ''certified'' BAIIDs, giving those States the responsibility for developing certification standards and test procedures. Consequently, a number of States and manufacturers of these ignition interlock devices requested that the Federal government develop and issue certification standards for BAIIDs. After receiving and considering comments, NHTSA adopted and published model specifications for BAIIDs in the **Federal Register** on April 7, 1992 (57 FR 11772).

Since publication, many States have incorporated these model specifications, or some variation of them, into their State certification requirements, thereby serving the purpose for which they were originally intended. Forty-three States allow the use of BAIIDs, and they are currently being used in connection with sanctions for Driving While Intoxicated (DWI). Persons required to use BAIIDs are either under the supervision of a responsible state agency (*e.g.*, a Motor Vehicle Administration) and/or under direct court supervision.

The experience of the last 13 years has shown that the issuance of model specifications and test procedures for BAIIDs has served to encourage a degree of consistency among the States while at the same time providing sufficient flexibility for States to address their individual needs or legislative requirements. The model specifications and test procedures were drafted in such a way to enable States to adopt them with minimal effort. However, the ignition interlock industry has matured, the technology has changed, and the technical and social environments have changed in the past 13 years. Therefore, it is NHTSA's view that revisions to the model specifications are appropriate.

NHTSA has not prepared a proposal for revised model specifications for BAIIDs at this time. Rather, NHTSA invites all interested parties to submit comments on what revisions are needed to update the model specifications. NHTSA is especially interested in obtaining comments from interested parties about the areas listed below. This notice also invites all interested parties to offer additional remarks, suggestions and commentary above and beyond the areas highlighted below:

(1) *Accuracy and precision requirements.* Are the current specifications for 90% accuracy at 0.01% w/v above the set point in the unstressed testing conditions, and 90% accuracy at 0.02% w/v above the set point in the stressed testing condition appropriate? Should the new model specifications change the set point from 0.025% w/v?

(2) *Sensor technology.* Should the model specifications limit sensor technology to alcohol-specific sensors? The model specifications currently include performance requirements but do not address what technology should be used to satisfy those performance requirements. In other words, the model specifications allow semi-conductor sensors, which were widely used during the early years after devices were first introduced into the marketplace. Alcohol-specific, fuel cell sensors appear to be more common today, but it is not clear whether the model specifications should limit devices to an alcohol-specific technology. NHTSA seeks comments regarding the advantages and disadvantages of limiting the model specifications to an alcohol-specific (fuel cell) technology, or other emerging technologies versus relying on performance requirements only.

(3) *Sample size requirements.* The model specifications set the minimum breath sampling size at 1.5 liters. Informal comments received over the years have indicated that this requirement may be too high. NHTSA will consider lowering the breath

sampling requirement, and/or including a requirement for both a minimum sample size and minimum back pressure at the input (mouthpiece) of the device. NHTSA requests comments regarding such a change.

(4) *Temperature extreme testing.* The model specifications call for testing at −40 °C, −20 °C, +70 °C and +85 °C, but allow for the removability of alcohol sensing unit so it may be kept warm (cool) when the vehicle is expected to be subject to extremely cold (hot) temperatures. NHTSA seeks comments about whether this approach to temperature extreme testing is sufficient, or whether more stringent demands should be made on equipment.

(5) *Radio Frequency Interference (RFI) or Electromagnetic Interference (EMI) testing.* The RFI testing protocol in the model specifications, however incomplete, uses power sources that are no longer commonly in use. New power sources (e.g., cell phones) that have output power commensurate with equipment in use today need to be identified. NHTSA welcomes comments suggesting appropriate levels of power for use in this RFI testing.

(6) *Circumvention testing.* The model specifications offer a number of procedures for evaluating whether existing devices can be easily circumvented. NHTSA seeks comments about whether these test procedures have proven adequate, or whether new or modified tests should be incorporated into the model specifications.

(7) *The Vehicle-Interlock Interface.* Anecdotal reports from ignition interlock manufacturers have suggested that it is sometimes difficult to install existing interlock systems in some of the newer electronic ignition systems. NHTSA seeks comments from all interested parties about whether NHTSA should establish any guidelines regarding the vehicle-interlock interface. More specifically, NHTSA invites comments regarding the feasibility and likelihood of incorporating generic hardware into vehicles to which commercially-available ignition interlocks could be connected.

(8) *Calibration stability.* NHTSA invites comments regarding whether the calibration stability testing is sufficient in length and/or whether ignition interlocks should be required to hold their calibration for longer periods of time, thereby requiring less frequent calibration checks.

(9) *Ready-to-use Times.* NHTSA seeks comments about whether it should establish a ''ready-to-use'' time period for extreme cold temperatures, such that devices must operate within a given period of time under extreme cold conditions.

(10) *NHTSA testing.* NHTSA seeks comments about whether it should undertake the responsibility for testing of ignition interlocks against its model specifications and subsequently publish a Conforming Products List (CPL) of devices meeting those NHTSA guidelines.

(11) *International Harmonization.* NHTSA seeks comments about the importance of the harmonization of the ignition interlock model specifications with standards in other parts of the world, such as the European Union, Canada, and Australia.

(12) *Specifications for Ignition Interlock Programs.* NHTSA seeks comments about whether the current ignition interlock community (users, manufacturers, states, etc.) favors NHTSA developing model specifications for ignition interlock programs, in addition to model specifications for devices.

(13) *Acceptance Testing.* NHTSA understands that its current model specifications involve ''type-testing'' of various models of BAIIDs. NHTSA seeks comments about establishing standardized acceptance-testing procedures, in addition to the current type-testing guidelines. It is not clear what testing might be included in such model specifications, or who would conduct the testing.

(14) NHTSA seeks comments from interested parties on any additional areas they believe will enhance the revision of the model specifications. This request for comments need not be limited to the 13 areas identified above.

In order to assist readers in preparing comments, the current model specifications are reprinted as an Appendix to this document.

Issued on: February 10, 2006.

Marilena Amoni,

Associate Administrator for Program Development and Delivery.

Appendix—Reprint From 57 FR 11774–11787 (April 7, 1992)

Model Specifications for Breath Alcohol Ignition Interlock Devices

Purpose and Scope

The purpose of these specifications is to establish performance criteria and methods of testing for breath alcohol ignition interlock devices (BAIID). BAIIDs are breath alcohol sensing instruments designed to be mounted in an automobile and connected to the ignition key switching system in a way that prevents the vehicle from starting unless the driver first provides a breath sample. These devices contain an instrument to measure the alcohol content of a deep lung breath sample. If the measured breath alcohol concentration (BrAC) is at or above a set level the ignition is locked and the vehicle will not start. These devices are currently being used as a court sanction. Drivers convicted of Driving While Intoxicated (DWI) may be required to use these devices on their car under court supervision. These specifications are intended for use in certification testing of BAIID's used under court supervision.

Definitions

D1 Alcohol

Ethanol; ethyl alcohol: (C_2H_5OH).

D2 BrAC

Breath Alcohol Concentration (BrAC) is expressed in percent weight by volume (% w/v) based upon grams of alcohol per 210 liters of breath in accordance with the Traffic Laws Annotated, Section 11–902.1(a) (Supp. 1983). A BrAC of 0.10% w/v means 0.10 grams of alcohol per 210 liters of breath (similarly, the Blood Alcohol Concentration or BAC associated with a BrAC of .10% w/v means .10 grams of alcohol per 100 milliliters of blood; except for the difference in the referenced volume measure—210 liters of breath vs. 100 ml of blood—the referenced grams of ethanol are identical). Alcohol concentrations in either breath or in air mixtures can be expressed in milligrams of alcohol per liter of air (mg/l); to convert mg/l to units of percent weight by volume, multiply by 0.21.

D3 BAIID (Breath Alcohol Ignition Interlock Devices)

These interlock devices are designed to allow a vehicle ignition switch to start the engine when the BrAC test result is below the alcohol setpoint, while locking the ignition when the breath test result is at or above the alcohol setpoint.

D4 Alcohol Setpoint

The Alcohol Setpoint is the Breath Alcohol Concentration at which the BAIID is set to lock the ignition. It should be noted that the alcohol setpoint is the nominal lockpoint at which the BAIID is set at the time of calibration.

Ideally, there should be no occasions when a person with zero BAC is blocked from starting a vehicle engine due to the interlock. Therefore, to help protect against the response of the alcohol sensor to vapors other than ethyl alcohol, such as tobacco smoke or mouthwash, and the natural production of gases by human subjects, some leeway is necessary at the low end. At the other extreme, a BAC of 0.05% w/v has been shown to produce evidence of behavioral impairment in some individuals, and in some parts of the country (e.g., Colorado and the District of Columbia) 0.05% w/v can be presumptive evidence of impairment and grounds for legal action. The setpoint must be between the limits of .00% and .05%.

With some known exceptions, use of a 0.025% w/v alcohol setpoint should minimize the possibility that users who have not recently ingested alcohol will have trouble starting their engines. A discussion of the rationale for selecting 0.025% can be found in section 4.1. State interlock program developers requiring use of these BAIIDs

should be aware that even at BrACs which are lower than many states' mandated ''legal limit,'' some drivers will already have their driving ability impaired.

D5 Breath Sample

The breath sample is normal expired human breath containing primarily alveolar air from the deep lung. See section 4.2 for a more detailed discussion.

D6 Fail-Safe

When the BAIID device cannot operate properly due to some condition (e.g., improper voltage, temperature exceeding operating range, dead sensor etc.) the BAIID will not permit the vehicle to be started.

D7 Tampering and Circumvention

D7.1 Tampering

An overt, conscious attempt to physically disable or otherwise disconnect the BAIID from its power source and thereby allow a person with a BrAC above the setpoint to start the engine.

D7.2 Circumvention

An overt, conscious attempt to bypass the BAIID whether by providing samples other than the natural unfiltered breath of the driver, or by starting the car without using the ignition switch, or any other act intended to start the vehicle without first taking and passing a breath test, and thus permitting a driver with a BrAC in excess of the alcohol setpoint to start the vehicle.

D8 Safety and Utility

D8.1 Safety Feature

Any specification related to insuring that the BAIID will prevent a driver with a BrAC above the alcohol setpoint from driving.

D8.2 Utility Feature

Any specification related to insuring that the BAIID will function reliably and not interfere with driving by operators whose BrAC's are below the alcohol setpoint.

D8.3 Optional Feature

Any specification that is not specifically recommended at this time but may be necessary to include at some future issuance of certification specifications. Non-inclusion at this time is due to lack of evidence that failure to include constitutes a significant problem. Also the optional feature may, if implemented, cause the cost and complexity of the interlock device to rise substantially.

D9 Certification Tests

Tests performed to check the compliance of a product with these specifications.

D10 Stress Tests

Any testing protocol which imposes on the BAIID an environmental or use-related challenge, such as extreme temperatures, voltages, vibrations, or frequent usage.

D11 Filtered Air Samples

Any human breath sample that has intentionally been altered so as to remove alcohol from it.

D12 Device

A breath alcohol ignition interlock device (BAIID).

D13 False Negative

A breath alcohol concentration determination that incorrectly permits a vehicle to be started when the driver's BrAC is at or above the setpoint.

D14 False Positive

A breath alcohol concentration determination that incorrectly prevents the vehicle from being started when the driver's BrAC is below the setpoint.

Model Specifications and Test Requirements

1.0.S/T Safety Specifications (S) and Safety Tests (T)

1.1.S Dual Accuracy and Precision Limits (High End)

The accuracy and precision shall be determined as described in paragraphs 1.1.1.S to 1.1.4.S when tested in accordance with section 1.1.T.

The accuracy specifications for the BAIID will be different depending on the test interventions. Two conditions are recognized: unstressed and stressed.

1.1.1.S Baseline Accuracy in the Unstressed Condition

Following a calibration, and when tested at neutral ambient air temperature (10–30 °C), all BAIIDs shall lock the vehicle ignition 90% of the time when the true alcohol content of the breath sample is 0.01% w/v BrAC (0.01g ETOH/210 liters air) or more above the alcohol setpoint.

1.1.2.S Accuracy After One or More Stress Tests

Following any one or more Stress Tests in which the BAIID is subjected to conditions as specified in Definition D10, the BAIIDs shall lock the vehicle ignition 90% of the time when the true alcohol content of the breath sample is 0.02% w/v BrAC (0.02g ETOH/210 liters air) or more above the alcohol setpoint.

1.1.3.S Standard Deviation (Precision)

The accuracy requirement as specified in 1.1.1.S is equivalent to distributions of test results with a mean equal to the alcohol setpoint (e.g., 0.025% w/v), and a standard deviation equal to 0.0078% w/v BrAC. The accuracy requirement specified in 1.1.2.S is equivalent to a distribution of test results with a mean equal to the alcohol setpoint (e.g., 0.025% w/v) and a standard deviation equal to 0.0156%.

Accordingly, under 1.1.1.S, 0.01% w/v BrAC above the alcohol setpoint (90% criterion) is equal to approx. +1.28 standard deviations. Similarly, under 1.1.2.S 0.02% w/v BrAc above the alcohol setpoint (90%) criterion is equal to approx. +1.28 standard deviations. This value of standard deviation, derived from a table of cumulative normal probabilities can be regarded as equivalent to a one-tailed test of significance, and represent the *maximum allowable imprecision under conditions of perfect accuracy.* When there is analytic inaccuracy in addition to imprecision, the allowable standard deviation will be lower.

The stable criterion for all test purposes is set as 90% correct test outcomes at .01% w/v above the setpoint for Section 1.1.1.S and 90% correct outcomes for .02% w/v above the setpoint for Section 1.1.2.S.

1.1.4.S Proportions

The *safety* requirement must specify the proportion of tests at BrACs of .01% w/v or .02% w/v above the alcohol setpoint at which the ignition must be locked. The table below shows the 90% criterion for unstressed and post-stress testing.

TABLE 1.—TEST BRAC LEVEL AT WHICH THE IGNITION MUST BE LOCKED AT LEAST 90% OF THE TIME DEPENDING ON WHETHER TEST IS UNSTRESSED OR STRESSED

Alcohol setpoint	Test BrAC level (% w/v)	
	Unstressed	Stressed
0.025% w/v*	0.035	0.045

* Recommended.

Because the values referenced for allowable error (e.g., 90% criterion) are derived from a standard table of probabilities, values could also be specified for any point along the hypothetical normal distribution with mean equal to the setpoint. For example, testing a 99.5% lock criterion (2.57 standard deviations) for the unstressed and stressed tests (by using 0.045% and 0.055% w/v solutions respectively) would have no practical value because a real test of the criterion would require at least 200 repetitions in order to reliably detect 1 failure. Therefore all testing as specified in 1.1.T is referenced to a 90% lock certainty, requiring, as will be noted below, 20 test repetitions for which there may be no more than 2 failures.

A matrix of safety test requirements as specified in Appendix A shall be required for full certification of an interlock device. Accuracy of thermometers used to monitor simulator temperature and the purity of alcohol used shall be traceable to the National Institute of Standards and Technology (formerly National Bureau of Standards). All test reports must clearly

specify the equipment used, the manufacturer, model number and calibration dates.

A qualified testing laboratory, chosen by a state to conduct these certification tests, shall be capable of establishing their own procedures. For reference, however, Appendix B contains the list of equipment, setup procedures for testing, and a protocol for mixing alcohol test solutions.

1.1.T Accuracy/Precision Tests (High End)

Two sets of criteria apply to the test outcome, depending on whether the BAIID had recently been subjected to a stress test. Paragraph 1.1.1.T specifies the criteria for the unstressed tests, paragraph 1.1.2.T specifies the criteria for the stress tests.

All tests shall be conducted on two different BAIIDs. These will be referred to subsequently as Device A and Device B.

The testing shall be repeated 20 times on device A, and 20 times on device B. Two types of results shall be recorded: pass/fail, and a digital readout. The pass/fail information can be read from the user display on the front of the interlock unit. A three decimal place digital readout of the vapor alcohol concentration sensed can be read from the BAIID display, if available, otherwise it shall be taken from an externally connected laboratory test instrument that monitors the BAIID's evaluation of the alcohol concentration of the introduced sample.

1.1.1.T Unstressed Accuracy/Precision Test Specifications (High End)

The baseline accuracy testing is conducted as a measure of the BAIID's ability to hold to or exceed a 90% accuracy criterion when a test solution is .01% w/v above the alcohol setpoint. Accuracy testing with this criterion shall be conducted at room temperature and initially precede all others to ensure that the fundamental operation of the BAIID is initially adequate under no-stress conditions.

If either BAIID fails to lock on more than two occasions in those twenty trials with an alcohol concentration of 0.01% w/v above the setpoint specification, then it has failed the no-stress accuracy test criterion of 90%.

1.1.2.T Stress Accuracy/Precision Test Specifications (High End)

This accuracy testing is conducted in conjunction with all subsequent Stress Tests to be specified in following paragraphs. This test protocol is a measure of the BAIID's ability to hold to or exceed a 90% accuracy criterion when a test solution is .02% w/v above the alcohol setpoint. This test shall be conducted at whatever temperature is called for by the test protocol utilizing the test criterion.

If either BAIID fails to lock on more than two occasions in those twenty trials with an alcohol concentration of 0.02% w/v above the setpoint specification, then it has failed the post-stress accuracy test criterion of 90%.

1.2.S Breath Sampling Requirement

All BAIIDs must require that a minimum of 1.5 liters of breath be introduced through the mouthpiece and run through the instrument before the alcohol content is measured. Compliance with this requirement can be determined by testing in accordance with paragraph 1.2.T.

1.2.T Breath Sampling Requirement Tests

The specification stipulates at least 1.5 liters of air be introduced before sampling the alcohol concentration. To determine that the interlock device is sampling alveolar air, spirometric measurement shall be made on both devices A and B at both the minimum acceptable and maximum acceptable delivery pressures as specified by the manufacturer.

If the sampling head of the interlock device is incapable of being fitted with a spirometer at the outlet to collect and measure all of the vented sample, then this test may be conducted in an air tight laboratory box with a transparent viewing window. In such a case, place the interlock in the box (fitted with a power outlet as needed), connect the output of the simulator to the inlet of the interlock via an air-tight feed line, and install a fitting on the vent port in the wall of the box. Connect the spirometer to the vent port. Measure the volume of air escaping from the vent port as an index of the volume of air introduced into the interlock. Record the volume of air when the sample is accepted by the interlock device.

Alternatively, a plastic bag suitably outfitted may be used in place of the box. The suitability of this alternative shall be verified by using a large (one to three liter) calibration syringe to demonstrate that collected volume equals input volume.

Begin Stress Testing Protocols

1.3.S Calibration Stability

All BAIIDs must meet the accuracy requirements set in paragraph 1.1.2.S when tested in accordance with paragraph 1.1.2.T after having been operated according to paragraph 1.3.T for 7 days longer than the period of time specified by the manufacturer in their application for certification. Thus, if the manufacturer intends to require their BAIID be brought in for maintenance and calibration every 30 days, 45 days, or 60 days, this period of time plus 7 more days (or 37, 52, or 67 days respectively), would be used to determine whether the BAIID met the calibration stability requirement.

1.3.1.S Lockout After 7 Days Beyond Service Interval

A BAIID must prevent engine ignition if it has not been recalibrated for a period in excess of 7 days beyond the manufacturer's recommended service interval. A warning must precede lockout when the manufacturer's recommended interval has passed.

1.3.T Calibration Stability Test

After completing all other tests required under section 1, the BAIIDs shall be recalibrated and remain in a fixed location in the testing laboratory for the period of time specified by the manufacturer for regular maintenance and calibration, plus 7 days. The calibration stability testing should proceed under two conditions: alcohol-free and with alcohol present. For nine out of ten test days, the BAIIDs shall be run through 10 test cycles per day using a human breath sample known to contain no alcohol. On the tenth test day, ten tests shall be performed with a known concentration of 0.10% w/v ethanol delivered from a simulator.

The calibration stability regimen shall be repeated five days a week during this interval. For example, if a manufacturer's recommended calibration interval is 60 days, this will require approximately 10 weeks (60+7=67 days) of testing, a total of 500 calibration stability tests. At least 50 of those tests then would be conducted with alcohol. Practically this would involve testing with alcohol once every two weeks.

Before continuing to the next phase of stability testing, the protocol described in Section 1.3.1.T should be evaluated.

Following the calibration stability regimen, the BAIIDs shall be retested according to the high end accuracy criteria as set forth in 1.1.2.S and the test procedures as set forth in 1.1.2.T. In addition, however, if the BAIIDs pass the accuracy/precision tests according to the criterion of 1.1.2.S (90% accuracy with a test solution .02% w/v above the setpoint), then the devices must then be recalibrated and be able to pass according to the criterion of 1.1.1.S (90% accuracy with a test solution .01% w/v above the setpoint).

1.3.1.T Evaluation of Lockout for Expiration of Service Interval

In the course of conducting the calibration stability regimen, the BAIID must be shown to prevent ignition if it has not been serviced. Determine that the warning signal alerts the user when the service interval expires. Determine that lockout ensues in 7 days.

Return to l.3.T to continue with the recalibration phase of testing.

1.4.S Power

If the BAIID device is designed to be operated from a 12 Volt DC vehicle battery, then it shall meet the accuracy requirements specified in paragraphs 1.1.1.S to 1.1.4.S when operated within the normal range of automotive voltages of 11 to 16 Volts DC, when tested in accordance with paragraph 1.4.T.

1.4.T Power Test

If the submitted BAIID draws its power from the vehicle battery, then the device shall be subjected to accuracy testing at both the high and low voltages according to the following protocol.

Devices A and B shall be selected and supplied with 11 Volts DC power and then subjected to the test protocol as set forth in section 1.1.2.T for accuracy testing.

Devices A and B shall be selected and supplied with 16 Volts DC power and then subjected to the test protocol as set forth in section 1.1.2.T for accuracy testing.

1.5.S Temperature

1.5.1.S Operating Range

All BAIIDs shall meet the accuracy specifications in paragraphs 1.1.1.S to 1.1.4.S when operated within a temperature range of +85 °C to −40 °C (+185 °F to −40 °F) and when tested in accordance with paragraph 1.5.T for their ability to operate properly at low and at high temperatures.

1.5.2.S Note on Extreme Operating Range

The BAIID manufacturer may chose to meet the specifications for temperature extremes (−40 °C and +85 °C) by having the alcohol sensing unit be removable (e.g., so that it may be kept warm (cool) when the vehicle is expected to be subject to extremely cold (hot) temperatures).

If the removable alcohol test unit is not removed, and as a result is exposed to temperatures outside the manufacturer's recommended operating range, then the BAIID shall fail-safe or the ignition be rendered inoperable.

1.5.T Temperature Tests

The following tests cover both the challenging and extremely challenging operating ranges. See section 2.3.T for warm-up utility tests that can be conducted in tandem with these temperature stress tests.

1.5.1.1.T −40 °C

Devices A and B shall be temperature stabilized for a period of 1 hr. in an environmental chamber set at −40 °C. After the period of temperature stability elapses, the BAIIDs shall be subjected to an accuracy regimen as specified in section 1.1.2 T.

1.5.1.2.T −20 °C

Devices A and B shall be temperature stabilized for a period of 1 hr. in an environmental chamber set at −20 °C. After the period of temperature stability elapses, the BAIIDs shall be subjected to an accuracy regimen as specified in section 1.1.2 T.

1.5.1.3.T +70 °C

Devices A and B shall be temperature stabilized for a period of 1 hr. in an environmental chamber set at +70 °C. After the period of temperature stability elapses, the BAIIDs shall be subjected to an accuracy regimen as specified in section 1.1.2 T.

1.5.1.4.T +85 °C

Devices A and B shall be temperature stabilized for a period of 1 hr. in an environmental chamber set at +85 °C. After the period of temperature stability elapses, the BAIIDs shall be subjected to an accuracy regimen as specified in section 1.1.2 T.

1.5.2.T Extreme Conditions Beyond Manufacturers Claimed Accuracy

If the BAIID manufacturer has chosen to meet the specifications for temperature extremes (−40 °C and +85 °C) by having the alcohol sensing unit be removable (e.g., so that it may be kept warm (cool) when the vehicle is expected to be subject to extremely cold (hot) temperatures), then the fixed or permanently installed portion of the BAIID only shall be exposed to the extreme temperature specification. Then, when the sampling head is reconnected to the device, the BAIID must meet the accuracy requirements as specified in paragraphs 1.1.1.S to 1.1.4.S when tested in accordance with paragraph 1.5.T. This testing shall be conducted promptly following reconnect so as not to allow the sensor to become equilibrated to the chamber temperature. Warming of the sensor is acceptable between trials if necessary to meet the specification.

If the sampling head is not removable and the temperature range within which the BAIID is claimed to operate properly is narrower than that provided for in paragraph 1.5.1.S, then at the extreme temperatures outside the range specified by the manufacturer, the BAIID shall fail-safe.

1.6.S Vibration

All BAIIDs shall meet the accuracy requirements specified in paragraphs 1.1.1.S to 1.1.4.S after they have been subjected to the vibration tests in accordance with paragraph 1.6.T.

1.6.T Vibration Stability Test

These tests are performed to determine BAIID fitness for the automotive environment. If the BAIID consists of more than one module, it will be necessary to shake each module separately. Before testing, inspect housing thoroughly for cracks.

1.6.1.T Test 1

Subject device A to simple harmonic motion having an amplitude of .38 mm (0.015 in.) [total excursion of 0.76 mm (0.030 in.)] applied initially at a frequency of 10 Hz and increased at a uniform rate to 30 Hz in 2.5 minutes, then decreased at a uniform rate to 10 Hz in 2.5 minutes.

1.6.2.T Test 2

Subject device B to simple harmonic motion having an amplitude of 0.19 mm (0.0075 in.) [total excursion of 0.38 mm (0.015 in)] applied initially at a frequency of 30 Hz and increased at a uniform rate to 60 Hz in 2.5 minutes, then decreased at a uniform rate to 30 Hz in 2.5 minutes.

1.6.3.T Variations

Perform the vibration tests as described in paragraphs 1.6.1.T and 1.6.2.T in each of three directions, namely in the directions parallel to both axes of the base and perpendicular to the plane of the base.

1.6.4.T

Repeat the test protocol for accuracy as specified in 1.1.2.T for both BAIIDs. The BAIID shall meet the accuracy requirements as specified in section 1.1.2.S.

1.6.5.T

After the vibration regimen, inspect both BAIIDs to identify any cracks in the exterior casing and failures in the tamper-proof points of interface with the automotive environment. If cracks or failures are identified, then the test unit fails. The manufacturer shall be allowed to submit subsequent devices for this test phase, but no more than 1 of 6 shall be allowed to fail this phase.

1.7.S Radio Frequency (Electromagnetic) Interference (RFI)

Radio frequencies generated inside the vehicle have the potential to interrupt signal processing, or sample evaluation at the BAIID.

The BAIID shall be accurate according to the specifications set forth in Section 1.1.2.S. and tested according to Section 1.1.2.T when exposed to radio frequencies generated by common in-vehicle appliances, such as CB radios or cellular telephones.

It should be noted that full characterization of RFI susceptibility of BAIID is beyond the scope of this effort. The following protocol shall be implemented as a limited test for whether intentionally generated RFI interferes with BAIID performance.

1.7.T RFI Testing Protocol

In an actual vehicle in which a BAIID is installed, the sampling head of the BAIID shall be connected to the alcohol-air delivery tube in preparation for testing according to the specifications as set forth in Section 1.1.2.T. The sampling head of the BAIID shall be positioned so that it is adjacent to (within 2 cm), but not touching, any BAIID electronics processing unit which is mounted inside the vehicle on or under the dashboard.

The antenna of a transportable cellular telephone with an output power of not less than 3 watts shall be placed within 5 cm of the sampling head/box of the BAIID. A telephone number shall have been keyed into the cellular telephone. The alcohol sample shall be introduced into the BAIID concurrent with the issuance of a ''send'' signal to the telephone.

During each cycle while the BAIID is evaluating the alcohol sample, and while the telephone continues to transmit, the antenna of the telephone shall be positioned in one of three orthogonal (i.e. 90°) orientations in relation to the BAIID. All three orthogonal orientations shall be tested.

In order to ensure the safety of the individual conducting the tests, these tests shall not be run more than six (6) minutes in any given one hour period (see American National Standard Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 300 kHz to 100 GHz, approved by the American National Standards Institute on July 30, 1982). Additionally, it is an appropriate rule of thumb for the test lab personnel to make sure their eyes (as well as the rest of their bodies) are kept at a distance of at least 30 cms. from the transmitting antenna during the tests.

The performance of the BAIID shall be evaluated according to the criteria of 1.1.2.T. The performance of the data recorder shall be determined to accurately reflect the test results found on the user display of the BAIID.

1.8.S Tampering and Circumvention

The BAIID must provide a method to detect two classes of misuse, tampering and circumvention.

1.8.1.S Tampering

The BAIID must provide a secure method to detect and store the time and date of tampering attempts made by the following means:

1.8.1.1.S—interrupting the power source of the interlock device causing it to fail, or to fail to record ignition activity,

1.8.1.2.S—vehicle engine starts *not* preceded by a passed interlock test, except during the free restart interval as provided for in 1.9.S.

Information about unauthorized starts that are stored internally shall not be lost when the interlock device is disconnected from the vehicle battery.

1.8.2.S Circumvention

The BAIID must be able to detect, or protect against, illegitimate air samples introduced to the sampling head. Illegitimate samples may be delivered from the following sources:

1.8.2.1.S—non-human delivery sources of air samples such as balloons or compressed air containers,

1.8.2.2.S—human sources of air samples that are altered through filtration or other means after leaving the mouth,

1.8.2.3.S—human sources of air samples provided by anyone other than the driver of the vehicle. This specification does not imply the BAIID be able to detect a unique breath signature, but to preclude curbside assistance to an impaired driver, the BAIID shall require that a second breath test be required once a vehicle has been underway for at least 5 minutes but not more than 30 minutes.

The BAIID must detect or minimize these types of circumvention in accordance with the criteria as specified in paragraph 1.8.T.

1.8.T Tampering and Circumvention Tests

1.8.1.T Tampering

1.8.1.1.T Power Loss

The BAIID shall be able to register any external (non-sealed) loss of power. Any attempt to disconnect the BAIID from the vehicle in which it is installed shall be recorded electronically. To conduct this test disconnect external 12 Volt DC power source to the Device A or B and determine that there is a record of power loss noted by the interlock device. This may be noted on a memory chip, or by another indicator which can be detected by the service technician.

1.8.1.2.T Circuit Tampering

The BAIID shall be able to register any engine start (whether or not the ignition switch is turned ON) which occurs without passing the BrAC test. This test will require use of an installed BAIID. To conduct this test, it will be necessary to ''hotwire'' the engine. The procedure for doing this will vary with the type of engine. One example is to attach one end of a wire to the primary side of the ignition coil (coming from the distributor) and the other end to the vehicle battery's positive pole. Then short the appropriate terminals on the starter relay or starter motor to determine if the vehicle is able to be started. If the vehicle starts, shut it off and then repeat this test 3 times on either Device A or B.

An interlock device ought to be capable of either preventing a vehicle from being successfully hotwired, or be capable of registering all such successfully completed bypasses of the interlock device. If the installed device fails to achieve either of these criteria and permits circuit tampering, then it fails this test phase.

1.8.2.T Circumvention

1.8.2.1.T Non-Human Samples

The BAIID shall be capable of detecting or failing 80% of the non-human breath samples introduced through one of the following:

- Mylar balloon
- Rubber (toy) balloon
- Compressed air (aerosol can or other source)

The balloons must be large enough to deliver the minimum volume requirement, 1.5 liters. The non-human circumvention test battery shall be conducted in accordance with section 1.1.T, except the sample introduced shall be alcohol-free air introduced through the three air sources identified above. These sources are exemplary and not necessarily the best or only sources suitable for this class of circumvention.

The devices A and B shall each be subjected to this circumvention testing. The criterion of failure in this case is more than two passed tests out of a series of 10. This is not a test of accuracy of alcohol detection, but a test of how well the BAIID can detect air samples that deviate from a normal breath sample.

1.8.2.2.T Filtered Samples

BAIIDs shall be capable of detecting or failing 80% of the filtered samples when filtered by either dry or wet filtering systems such as the following:

- Commercial cat litter, silica gel
- Heated water
- Approx. 4 ft. or 1.5 meter long Tygon tube (⅜″ i.d.)

The filtered sample circumvention test battery shall be conducted on both devices A and B in accordance with section 1.1.2.T. In this case all elements of the testing procedure as specified in 1.1.2.T shall be identical except that the sample shall be filtered by interposing two different filtering systems, in separate tests, between the sample simulator and the interlock device. The dry filter can be composed of any tube packed with a suitable absorbent material, such as those identified above, but in doing so, the technician must keep in mind the constraints of absorbent capacity and the relationship between packing and blowability. For example, a 2½ inch piece of cardboard tubing (¾ inch diameter) might be used. It might be packed with 12 ounces of commercial cat litter, each end of the tube being stopped with cotton wadding. The wet filter shall ideally consist of water heated to 34 °C in a capped cup fitted with inlet and outlet hoses. The filter device shall be made of common materials that are widely available. For example, a 6 oz. styrofoam coffee cup might be used with ¼ inch rubber or Tygon tubing used for inlet and outlet hoses. In the case of use of the 4 ft. long Tygon tubing as a filter, the tube shall be chilled to 0 °C and attached securely to the BAIID mouthpiece before attempting to provide a sample.

1.8.2.3.T Rolling Retest To Thwart Curbside Assistance

After passing the test allowing the engine to start, the BAIID shall require a second test within a randomly variable interval ranging from 5 to 30 minutes. During the rolling retest, the retest setpoint shall be .02% w/v higher than the startup setpoint to preclude a false positive test result.

In order to alert the driver that a retest is to be required, a 3 minute warning light and/or tone shall come on. The driver would then have 3 minutes to retest. If the engine is intentionally or accidentally shutdown after the 3 min. warning but before retesting, the retest clock shall not be reset. Retesting takes priority over free restarts (see Sect. 1.9). Test that the free restart is not operative when the BAIID is awaiting a rolling retest sample.

The consequences of a failure to take the retest, shall be threefold. First, the refusal to perform a rolling retest shall be flagged and recorded on the data recorder. Second, the BAIID shall warn the driver by a unique auditory or visual cue that the vehicle ignition will enter a lockout condition within a period of 5 days, and that the assignee shall report to the BAIID program monitor promptly. Third, the lockout shall proceed within 5 days.

A retest that is taken as required and subsequently failed shall result in an alert condition that is flagged on the data recorder. The BAIID assignee shall be signalled that the BAIID program monitor must be notified promptly of the violation, the automatic lockout shall proceed.

The test protocol shall determine that both devices A and B are capable of performing according to this specification.

1.9.S Sample-Free Restart

After a stall, a sample-free restart shall be possible for 2 minutes. This free restart does not apply, however, if the BAIID was awaiting a rolling retest that was not delivered.

1.9.T Sample Free Restart Test

The BAIID shall permit a free restart (no breath sample required) for 2 ± .25 min. Conduct six tests with an alcohol-free sample from either a human or non-human source. Three tests at 1.5 min, three at 2.5 min. Use devices A and B. The BAIIDs shall allow a start without requiring a sample for all of the first three tests, and fail to start without a sample on the subsequent three tests.

1.10.S Data Recording

An active monitoring program will require vehicle use information. A BAIID shall have the capability to record the nature of such use and the test outcomes during the stipulated period. The following kinds of information shall be recorded by the BAIID:

- Efforts to disable the unit
- Date of vehicle use
- Time of vehicle use
- Pass/fail records
- BrAC levels
- Starting and stopping of vehicle engine
- Service reminders issued (date)
- Date service performed

1.10.T Data Recording Test

Perform test according to manufacturer's instructions. Determine whether readout is satisfactory and understandable. Test to be certain that the BAIID memory remains intact for multiple printouts if desired, or until the service technician chooses to reset/erase the memory.

2.0.S/T Utility Specifications (S) and Utility Tests (T)

2.1.S Dual Accuracy and Precision Limits (Low End)

The accuracy and precision for the utility specification shall be determined in a

manner parallel to that described in paragraphs 1.1.1.S to 1.1.4.S except for the test solution of alcohol to be used in the simulator. In the case of the utility specification, as with the safety specification, there is a dual criterion depending on the existence of stress test protocols. No stress test protocols are specifically provided for here in conjunction with *utility* specifications, since these are not strictly highway safety question. Certifying authorities wishing to conduct stress-involved protocols for the utility specification could conduct them in a parallel fashion to those provided for and beginning in Section 1.3. Nonetheless, a parallel dual set of specifications is proposed here for States wishing to conduct such testing.

2.1.1.S Baseline Accuracy in the Unstressed Condition

All BAIIDs shall allow the ignition to remain locked no more than 10% of the time when the true alcohol content of the breath sample is 0.01% or more below the alcohol setpoint and testing is being conducted under ambient temperatures in the range of 10–30 °C in a newly recalibrated BAIID.

2.1.2.S Accuracy Under Stress Conditions

Under conditions of stress testing, the BAIIDs shall allow the ignition to remain locked no more than 10% of the time when the true alcohol content of the breath sample is 0.02% w/v or more below the alcohol setpoint.

2.1.3.S Standard Deviation (Precision)

Precision guidelines shall be parallel to those described in Section 1.1.3.S.

2.1.4.S Proportions

This is to specify the proportion of tests at BrACs of .01% w/v and .02% w/v below the alcohol setpoint at which the ignition must be unlocked. The table below shows the 90% criteria of accuracy for unstressed and post-stress testing.

TABLE 2.—TEST BRAC LEVEL AT WHICH THE IGNITION MUST BE UNLOCKED AT LEAST 90% OF THE TIME DEPENDING ON WHETHER TEST IS UNSTRESSED OR STRESSED

Alcohol setpoint	Test BrAC level (% w/v)	
	Unstressed	Stressed
0.025% w/v*	0.015	0.005

* Recommended.

2.1.T Testing of Utility Specification (Dual Criteria)

All utility tests shall be conducted on the two BAIIDs, devices A and B. Two sets of specifications can apply, but only one of these specifications, the baseline or unstressed protocol (2.1.1.T) is specifically utilized.

2.1.1.T Utility Accuracy Testing of Unstressed BAIID

The accuracy testing is conducted as a measure of the BAIID's ability to hold to or exceed a 90% accuracy criterion when a test solution is .01% w/v below the alcohol setpoint. This test shall be conducted at room temperature and precede all other utility tests to ensure that the fundamental operation of the BAIID is adequate under no-stress conditions after recent recalibration.

The test shall be repeated 20 times on device A, and 20 times of device B. Two types of results shall be recorded, pass/fail, and a digital readout representing the BAIID's evaluation of the alcohol concentration of the introduced sample.

If either BAIID locks more than twice in those twenty trials then it has failed the no-stress accuracy utility test criterion of 90%.

A failure to meet the accuracy criterion shall disqualify the BAIID.

2.1.2.T Utility Accuracy Testing of Stressed BAIIDs

If the certifying authority chooses to conduct tests of the utility specification for stressed BAIIDs, it is recommended that a protocol be followed that parallels those proposed for Stressed BAIIDs beginning in Section 1.3, and that the criteria for evaluation be .02% w/v below the setpoint for 90% unlocked accuracy.

2.2.S Clearance Rates

The BAIID shall permit a test within 3 minutes of a previous test at a BrAC < .05% w/v.

2.2.T Clearance Rate Test

The BAIID shall reset to zero and be ready for a retest within 3 minutes of a previous test at BrAC = .05% w/v.

Test adherence to this criterion by introducing a .05% w/v sample into devices A and B, activate a timer upon receipt of the test result, record the test result. Record the elapsed time before the BAIID indicates a ''ready'' condition. Repeat this three times for each BAIID.

2.3.S Warm Up

The BAIID shall be ready for operation within 5 minutes of being turned on at −20 °C (−4 °F).

2.3.T Warm Up Test

The warm up period during which the BAIID heats the sensing head shall require no more than 5 min at −20 °C (−4 °F).

This test can be conducted as part of the environmental chamber tests specified in section 1.5. After stabilization in the environmental chamber at −20 °C for 4 hr. activate timer concurrent with activation of the BAIID. Record the time required before receiving a ''ready'' condition.

2.4.S User's Display

The BAIID shall provide certain types of informational feedback to the driver. These messages include: BAIID readiness for sample, test outcome, and warning messages.

2.4.T User Display Tests

2.4.1.T Operational Modes

Indicators must be plainly visible or clearly audible to the user denoting the following:

- Unit is ON
- Unit is READY FOR TEST
- Unit has RECEIVED ACCEPTABLE SAMPLE

2.4.2.T Outcome

Unit must plainly indicate the test results with a minimum message of:

- PASS or FAIL

2.4.3.T Warnings

- UNIT must be SERVICED and CALIBRATED SOON

2.5.S Temperature Package

To reach conformance with temperatures below −20 °C or above +70 °C, the manufacturer may make available a mechanism or procedure that can achieve the warm-up (cool-down) needs. This can be accomplished via removal of the sampling head from the vehicle for bringing inside the home, or via provision of a heating jacket, or other procedures.

2.5.T Low Temperature Package Tests

Evaluate manufacturers' proposed procedure for temperatures as low as −40 °C.

2.6.S Altitude

The manufacturer shall place a notice in the BAIID manual and on the device noting that the alcohol sensing unit is more sensitive to ethanol at higher altitudes, and that attempts to start at altitudes higher than that for which the BAIID is calibrated could result in a lockout even when the BrAC is lower than the alcohol setpoint.

2.6.T Altitude Test

The BAIID must provide some written notice to the user of the possibility of a lockout at higher altitudes if it is unable to maintain accuracy at ground elevations up to 2.5 km.

3.0.S/T Optional Features Specifications (S) and Optional Features Tests (T)

3.1.S Optional BrAC Display

Knowledge of the relation between drinking and BrAC can be a useful educational tool for motivated users. Therefore it is suggested that states give consideration to whether a BAIID give a BrAC readout to the user—in addition to a mere pass/fail indication—after a test.

3.1.T Optional BrAC display

Evaluate the adequacy of the display indicator which informs the user of the BrAC test result.

3.2.S Optional Sample Acceptability Criteria at Inlet

To improve circumvention protection, sample evaluation criteria as specified in 3.2.1.S and/or 3.2.2.S may be required. These criteria are noted as optional at this time, but may be necessary in order to eliminate the most commonly identified methods of circumvention. Further discussion can be found in Sec. 6.2.

3.2.1.S Optional Temperature Window of Sample

Imposing a criterion requiring the sample to fall in a range between 32–48 °C will improve rejection of bogus samples at neutral ambient temperatures. Other criteria may need to apply, however, when air temperatures fall outside the neutral range.

3.2.2.S Optional Minimal Pressure of Sample

Filtered samples may suffer pressure losses. A minimal pressure requirement of 12 inches of water will help screen out filtered samples.

3.2.T Optional Sample Acceptability Criteria Test

These optional features, if adopted, will have been tested in tandem with the circumvention test protocols in paragraphs 1.8.2.T. If the acceptability criteria are incorporated into the design of the BAIID, it is expected that fewer bogus air samples will have resulted in a pass condition.

3.3.S Optional Smoke Protection

Tobacco smoke is known to produce false positive results on semiconductor type interlock devices. Smoke from burning fields, a common seasonal event in some rural areas, may similarly be a source of error. Protection of the sampling head from ambient smoke conditions may be necessary under some conditions.

3.3.T Optional Smoke Protection Test

To evaluate the potential of air borne smoke to interfere with the accurate sensing of alcohol, perform testing according to paragraph 1.1.T and/or 2.1.T (depending on the testing authority's interest in safety or utility concerns), in a chamber filled with smoke from burning vegetal substances or similar conditions.

3.4.S Optional Dust Protection

Fine dust can cause problems with electronic equipment by forming conductive bridges. However, of even greater concern with the interlock device is the ability of fine dust to absorb vapors. This is a specification that may be of concern in arid regions, or where there will be BAIIDs installed in construction vehicles. States subject to dust conditions may want to require some kind of a housing that protects the BAIID sampling head from exposure to powdery dust. Dust protection is incorporated in the Australian Standard for BAIIDs.

3.4.T Optional Dust Protection Test

If a test for dust protection is required by a state, the certification authority may want to follow the clearly specified test procedure in the Society of Automotive Engineers Recommended Environmental Practices For Electronic Equipment Design—J1211, page 20.122, Sect. 4.5.

3.5.S Optional CB Radio Alert Condition

Under conditions of a failure to take the required rolling retest, or a failure to pass a rolling retest (as provided for in paragraph 1.8.2.3.T), a signal could be transmitted over a restricted CB channel that can be monitored by the police which alerts nearby cruisers that an impaired driver is operating a motor vehicle. This optional feature can be regarded as support for the anti-circumvention feature as described in paragraphs 1.8.2.3.S and 1.8.2.3.T.

3.5.T Optional Alert Conditions Test

No test protocol is proposed.

4.0 Commentary on Safety Specifications

These specifications have been divided into safety and utility specifications. This distinction has been made in the Definitions Section D8. Safety issues are by far the more important and the majority of the testing is devoted to insuring that BAIIDs perform as expected under conditions of normal field use. It is expected that normal field use will involve a wide range of driving and outdoor conditions, as well as having a minimum of 5% of users trying to circumvent or tamper with the BAIID in order to drive while impaired.

The ethanol sensing technology that has been adapted to the automotive environment for BAIID devices is mostly based on the Taguchi semiconductor device. The semiconductor devices are not as specific or stable as evidential field use breath testers. However, the purpose of the BAIID is not to accurately measure in mg/ml the BAC of a driver, but to prevent the person with a high BAC from operating a motor vehicle. For this reason, the specification has allowed greater leeway in the accuracy test criteria, but has also included a protocol for circumvention protection. In the associated technical report strong recommendations are made for a central authority within each State to maintain authoritative programmatic control of the BAIID option.

4.1 Accuracy

With respect to accuracy, these specifications establish a range of acceptable performance, especially under so-called ''stress'' conditions such as temperature extremes, vibration, power variability, etc. For this reason a ''double standard'' is proposed which is conditional on the recent stress exposure of a test unit. The reasoning for this is as follows.

First, a newly recalibrated BAIID that is not subjected to stress tests ought to be held to a higher standard than one which has been so subjected. Field experience with the installed units using semiconductor technology has shown that there is considerable average error (in the range up to 0.015% w/v) following 60 days of routine field use of a BAIID.

These specifications do not provide for accuracy testing under compound stresses, such as low temperature with low power at high altitude. Rather than proposing tests for compound stresses to accuracy here, the requirement for such tests should rest with the certifying authorities of the States who can best determine their unique situation evaluation requirements. Clearly, northern Rocky Mountain States would be more interested in combined high altitude and low temperature tests than would States in the southeast. Similarly, many questions have not been researched which may prove significant. For example, would a BAIID calibrated for use at high elevation be able to meet the accuracy specification when tested at the coldest temperatures at sea level? These questions are too specific for inclusion in national guidelines, but may be important regionally.

When measuring accuracy and precision of any instrument it should be understood that all measuring devices have a certain natural amount of dispersion of scores around a mean (average) true value. Because of this fluctuation, the setpoint of the interlock device needs to be clearly specified in a way that accommodates this natural variability. In this specification, the worst acceptable deviation under conditions of perfect accuracy have been identified. This allows for inaccuracy and imprecision to trade-off as long as the overall probability of error is lower than the constant specified.

The proposed specifications for interlock devices ostensibly acknowledge three lock points:

- The alcohol setpoint (the nominal lock),
- The virtual lock (90% certainty),
- The near absolute lock (99.5% certainty).

The alcohol setpoint is defined as the interlock device-measured BrAC value at which the ignition will lock.[1] That is, the alcohol setpoint is the BrAC value at which the interlock is set. Due to the inherent variability in these measuring devices, this nominal lockpoint will be the mean of a distribution of true blood or breath alcohol concentration values as determined by evidentiary BrAC equipment. Interlock imprecision is the deviation from that value. The higher the precision of the interlock, the smaller will be the dispersion of true BrAC values around the stipulated alcohol setpoint.

The virtual lock point will be the actual, or true BrAC above which the vehicle must fail to start 90% of the time. The difference between the setpoint and virtual lock values will be a gray area which reflects both imprecision and inaccuracy. The guideline specifies that there should be a maximum permissible standard deviation from the setpoint equal to 0.0078% w/v BrAC under conditions of no-stress. Following stress protocols, the maximum permissible standard deviation under conditions of perfect accuracy is equal to .0156% w/v.

The third type of lockpoint is the near absolute lock point and is of theoretical interest only because many hundreds of repetitions would be needed to test it. The

[1] This standard recommends that .025% w/v be chosen as the setpoint.

near absolute lockpoint is equivalent to +2.57 standard deviations in a normally distributed sample of trials where 99.5%, practically all, start attempts must fail. In the unstressed condition, this would be .02% w/v above the setpoint and .04% w/v above the setpoint in the stressed conditions. The implication of this is that for devices which are tested against the specification (even with its most lax accuracy standard), a person with a BAC equal to .065% w/v—still well below the legal limit of most States—would almost certainly be locked out.

Since the condition of virtual lock is defined operationally as 1.28 standard deviations above the alcohol setpoint, and the absolute lockpoint is 2.57 standard deviations above the setpoint, a brief explanation of standard deviation (sd) is relevant.

Standard Deviation—The standard deviation is a statistical measure of dispersion of a group of scores, it is also referred to as ''sd,'' or ''s.'' The standard deviation is the most common way to express fluctuation around a mean value. For example, repeated measurements with precise instruments result in a much smaller standard deviation than do repeated measures done on imprecise instruments. In the extreme case, if a BrAC measuring device correctly reads .020% w/v for all samples evaluated from a .020% test solution, the mean of the sample is .020%, and the standard deviation is zero.

The standard deviation is the square root of the average deviation of all scores from the mean. Most scientific, financial and programmable calculators have a key dedicated to the calculation of the standard deviation. However, it can be hand calculated from the following formula.

$$\sqrt{\frac{\sum x^2 - \frac{\left(\sum X\right)^2}{n}}{n-1}}$$

The symbol **Σ** means to sum up.

That is, square all the raw values (x) and sum up those squares (e.g., Σx^2). Second, sum up all of the raw values and then square that number (e.g., $(\Sigma x)^2$), and then divide that result by n. Then subtract the second value from the first value. Divide the answer by n − 1. The result is the variance. To calculate the standard deviation, take the square root of the variance.

Example—The following 10 raw BrAC values have a mean of 0.0224, and a standard deviation of 0.0016.

.023	.022
.024	.025
.020	.020
.022	.023
.022	.023

If the nominal lock is set at .025% w/v, on average 9 of 10 times a vehicle ought to be able to start when the true BrAC is .015%, and fail to start when true BrAC is .035%. Because of the instrument limitations, and because there is little evidence that drivers with a BrAC under .01% increase the risk of highway accidents, a nominal ignition lock less than .02% w/v is not warranted.

The State of California has allowed for a lockpoint at 0.03% w/v, the State of New York has specified a lockpoint of 0.02% w/v. The nominal setpoint in this specification is 0.025% w/v. The value 0.025% w/v is midway between 0 and 0.05% w/v, values which are arguably the extremes under which a vehicle always ought to start and never start, respectively. The true performance of the interlock devices will be somewhere between those extremes. However, because the first generation of BAIIDs are not up to the evidential standards for BrAC testing it would be unwise to demand feats of great precision and accuracy from them. The most important consideration in a successful interlock program is the ability of the BAIID to prevent a high BAC person from operating a vehicle, and minimize problems with lawful use of the vehicle, by the offender or family members. There are many reasons why such a wide band of acceptable performance should be adopted at this time. Among these reasons are the following:

- The BAIID will operate in environments with extreme variations, many which will be hostile to electronic sensing equipment,
- The BAIID will not be inspected or calibrated for up to two months even though receiving multiple daily usage,
- BAIID certification studies under controlled laboratory conditions have identified errors in excess of 0.015% under modest stress conditions,
- BAIID semiconductor devices are non-specific detectors of ethanol and can respond to cigarette smoke, various mouthwashes, some endogenously produced human compounds, and probably many things that haven't been identified as yet.

Having provided for a lenient specification with this first issuance of model specifications, it is expected that as the technology improves, the specifications will be made more rigorous. It should again be emphasized that precision and accuracy, while important, are less important than circumvention and tampering protection.

4.2 Breath or Blood Alcohol Estimation and Sample Requirements

The acronym BAC often refers to both *blood* alcohol concentration and *breath* alcohol concentration. In this document, breath alcohol concentration is designated as BrAC. Because alcohol (specifically ethanol: C_2H_5OH) possesses a high degree of solubility, it is capable of passing readily through biological membranes—such as the cells lining the blood capillaries and lungs—either as a liquid or as a vapor. The first concern in sampling the breath as a way to draw inferences about the blood concentration of alcohol is to be sure that the air sample is drawn from a region of the lungs where the alcohol vapor is in equilibrium with the blood concentration. This requires that the air come from deep within the lungs, so-called alveolar air, or deep lung air. Air from the upper lungs such as the bronchi contains less alcohol than deep, alveolar air.

Virtually all evidential BrAC measurement devices have blowing pressure and/or duration requirements intended to insure a deep lung sample. The purpose of this is to assure that the breath sample is in equilibrium with the circulating blood. Because of the gradual absorption of alcohol and the mixing action of the blood, the ethanol is equally distributed through the bloodstream.

The average vital capacity (exhalable air volume) of healthy adult male human lungs is approximately 4.5 liters of air, and approximately 0.5 liters is exchanged with each breath. The average woman's capacity and normal breath volumes are slightly lower, but the range of human vital capacities varies from 1.8 to 6 liters of air. To insure that the breath sample is alveolar air, the interlock device must require that a minimum of 1.5 liters of air be exhaled before sampling the air for alcohol content. This quantity is selected as a compromise.

4.3 Calibration Stability

The stability specification is added to assure that the performance criteria as noted in the accuracy specification (sec. 1.1.S) can be maintained during the normal duration that the interlock devices will be in use. Some types of breath sensing devices are inherently more stable than others and the stipulated period of stability will help to assure that a user's BAIID will not deviate from the specification during the inter-service interval. This is deemed necessary because considerable drift is possible in the current generation of BAIIDs after repeated use over time.

4.4 Power

The power specification was added to insure that BAIIDs are not prone to allowing a higher proportion of passed tests when the DC power to the BAIID varies within the normal automotive starting systems's range of weak or undercharged to overcharged battery voltage conditions. The range stipulated in the specification (sec. 1.4.S) is based on the Society of Automotive Engineer Recommended Practice, Report of the Electronics Systems Committee, definition of the normal range of supply voltages in the automotive environment.

4.5 Temperature

The use of the electronic devices in extreme temperatures can pose a challenge to the capability of an instrument to hold to specifications of accuracy. Therefore, ambient temperatures that are apt to be encountered during a visit to any part of the U.S. should ideally be tested. For example, a resident of a warm southern state may have occasion to travel north in the winter, so when state authorities specify standards they should take into account environmental extremes not encountered inside their own state borders. In extreme temperature situations, the automobile can become a survival tool, so it is important that the interlock be capable of allowing a start under conditions of severe heat and cold when a driver has a permissible BrAC.

One special recommendation is noted in the guidelines for low temperatures. Some cities in Alaska and the north central states (especially MN, ND, MI, and MT) have *normal* January low temperature equal to or below the −20 °C (−4 °F) specification,

record cold mornings have been as low as −40 °C/F. Appropriately many northern states, and the Province of Alberta, have set −40 °C as the lower test limit, while other states have set −20 °C as the minimum test specification.

Given the reality of such cold temperatures, the specification as proposed here is −40 °C, but the difference between −20° and −40° can place extreme demands on any electronic device, particularly one designed to sample alcohol vapor concentrations. For this reason, Section 1.5.2.S stipulates that manufacturers may make available some kind of provision, such as a prewarming device, that allows the interlock to be brought up to a warmer temperature before the driver attempts to use the BAIID. Manufacturers may also consider providing for a removable sensor head that can be stored in a warmer environment overnight. It is recommended that colder states *insist* on the manufacturers making some provision for cold weather. It should be noted that the SAE Recommended Practices for Electronic Equipment states that ''thermal factors are probably the most pervasive environmental hazard to automotive electronic equipment.'' It identifies the normal vehicle interior heat range as −40 °C–+85 °C. This specification adopts the SAE range as the recommended range, while offering alternative strategies for compensating for these temperature extremes. Both real world use and testing should also accommodate the physical difficulties of measuring a vapor under such extreme conditions.

An interesting compromise solution to this trade-off between temperature and accuracy was rendered by Alberta which stipulated that if a BAIID was unable to meet the accuracy requirement at 40 °C below zero when the samples tested ranged from .01 to .05% w/v ethanol, then the BAIID must be able to lockout 100% of 30 further trials when an ethanol sample concentration is increased to .08% for retest. This embodies an approach to interlock specifications similar to the one outlined here. That is, the specific accuracy of the BAIID, while important, is less critical than the ability of the BAIID to prevent the severely impaired person (*e.g.* above .08% BrAC) from operating a motor vehicle.

The specific design of the low temperature *fail-safe* mechanism can be left to the discretion of manufacturer. One example, however, is a temperature-sensitive switch that cuts out the ignition circuit when the sampling head temperature is below the operating range of the BAIID.

4.6 Vibration

Vibration is common in all automobiles, and the BAIID ought to be capable of performing after specifiable vibrational exposure. The standard specification for evidentiary breath testers is repeated here as a minimum vibration specification.

4.7 Radio Frequency and Electromagnetic Interference

The proliferation of electronic gadgetry installed inside vehicles in recent years is large and some may have the potential to emit electrical fields which could alter interlock signal processing. This potential problem was identified in 1982 when a few older evidential field breath test units operating in the vicinity of police communications equipment were found to have been disrupted.

The environment of the police cruiser, with its communications equipment, may be an atypical one for the vast majority of interlock users. However, the possibility remains that electromagnetic fields associated with typical cellular telephones or CB radios may contribute to error or malfunction of the BAIID.

The test procedures identified here are designed to assess whether the most commonly used in-vehicle appliances are going to alter the operation of the interlocks.

4.8 Tampering and Circumvention

At the current state of development of interlock devices, tampering and circumvention protection is not fully developed. Much of the protection is based more on ensuring the inconvenience of tampering and circumvention rather than the impossibility of it. The highly motivated user generally can, with preplanning, override the standard protection schemes.

4.8.1 Tampering

The tampering protection is designed to prevent easy entry and alteration of the interlock devices, hot-wiring of vehicles, or other non-standard start efforts that seek to preclude a breath test as part of the ordinary startup.

The largest BAIID manufacturer uses a tamper seal on sensitive parts of the BAIID. This tamper seal is a type of sealing tape which apparently cannot be removed without destroying it or making it evident to the service person that entry was attempted. It may be, however, that such tape could be duplicated and find its way onto an underground market. Conceivably there would be some value to producing a unique tape that could not be easily reproduced. There is really no evidence that such a thing occurs now, and therefore it is premature to propose it in the specifications. Nonetheless, it may be of interest at some point.

4.8.2 Circumvention

The requirements for circumvention protection must acknowledge trade-offs between allowing unimpaired drivers to start their vehicles and preventing impaired drivers from doing so. Given the infancy of the technology, a balance of false negatives and false positives [2] needs to be struck that realistically accomplishes the intended purpose of the interlock devices for the majority of users. With that stipulation, the specifications note that 80% of the major known means of circumvention be locked out.

Human breath has an exit temperature close to 34 °C (93 °F), and is completely saturated with water. The range of pressures of exhaled air ranges up to about 30 inches of water. These and other characteristics of exhaled breath might at some point be usefully applied as restrictions placed on a sample to require that it fall within some range of acceptable elements of a breath signature so as to minimize circumvention from non-human sources. The specification as currently written is not ideal and should be made more stringent as the industry and the technology mature. The optional features as specified in 3.2.S, and discussed in 6.2 address this problem.

Filtration systems are capable of removing alcohol vapors from breath samples. Most filtering systems, however, also remove water vapor, change the temperature or pressure or otherwise change the human breath signature. These changes could be recorded as indices of attempts to use a filter to circumvent the BAIIDs.

The requirement of a rolling retest is directed toward preventing two types of offenses:

- Allowing a pedestrian, or other non-occupant of the moving vehicle, to give the initial breath sample to start the vehicle
- Preventing vehicle use by someone whose BrAC is still in an ascending phase

In this specification, the rolling retest setpoint criterion is recommended to be .02% w/v higher than the startup setpoint. This is done to reduce the basis for a measurement error claim because of the likely gravity of the consequent sanctions for a failed rolling retest, such as loss of driving privileges for an extended period of time.

It needs to be emphasized again, however, that when a rolling retest is failed there are no immediate sanctions proposed such as flashing lights or horns or other distractions. And therefore there are no threats to the safety of the driver of other motorists resulting from this test protocol. The consequence of failing or failing to take a required rolling retest are all delayed and only involve an auditory or visual cue to the driver. This cue signals the requirement that the user report immediately (within days) to the BAIID program manager and the service technician. The requirement of actually taking a rolling retest would be no more disruptive than routine in-car driving activities such as adjusting an air conditioner or tuning a radio dial. The drivers eyes need not be taken from the roadway.

For a further discussion of rolling retest see paragraph 6.5.

4.9 Free Restarts

The re-test limits were necessary in order to make provisions for mechanical or BrAC-related failures. When vehicles stall, particularly in traffic, or because of faulty mechanical or electrical systems, a quick restart should be available. A driver should not be penalized for having a malfunctioning vehicle. The grace period for restarts should be limited to 2 minutes—adequate time for a restart.

4.10 Data Recorder

A record of vehicle use and interlock test results are believed to be critical to accurate monitoring programs. When such monitoring

[2] It should be noted that a false negative test is one which incorrectly allows the driver to start the car when the BAC equals or exceeds the setpoint. Conversely, a false positive test is one which prevents an engine start when a driver's BAC is legitimately below the alcohol setpoint.

programs are in place, and when they depend upon the durability and accuracy of a vehicle-use report such as one that can be provided from a memory chip internal to the interlock device, then provisions should be made for preserving the integrity of the data record upon loss of vehicle battery power. To achieve this result may require that the memory chip be provided with continuous internal power from a small battery, one not accessible without breaking a sealed compartment. In this way, a severely non-compliant user would be unable to erase all evidence of misuse from the data record in exchange for what could easily be interpreted as an honest power loss due to a dead battery (in devices that draw power from the vehicle battery). Without some sealed power circuit to the memory, the record would be lost. This is not necessarily the best solution, just one approach.

4.10.1 Recording Efforts To Disable Unit

Interlock units should alert the service technician to tampering attempts through some mechanism that is immediately detectable at the calibration check. Once a tampering attempt is discovered, the technician should examine the unit and all the critical wiring junctions. The attempt, and other pertinent evidence of tampering, should be submitted to court personnel on the appropriate forms.

4.10.2 Recording Vehicle Use

In order for court personnel to effectively monitor the appropriate use of the interlock, a hard-copy report generated by the unit at the time of calibration should contain items of information as noted in the specification.

4.10.2.1 Date

A record of the date demonstrates that the unit is being used by the client. Reports that show a consecutive number of days with no test taken should signal court personnel of an irregularity. The concern to be addressed is the possibility of a client driving a non-interlock equipped vehicle.

4.10.2.2 Time of Day

A record of the time of day along with the date shows the total number of tests taken on any given day and how many tests were taken in a row. This information is useful for evaluating client compliance. For example, a few failed tests with high BrAC followed within a few minutes by a pass could be evidence of circumvention. It is important for program monitors to have some kind of procedure, such as an algorithm that can read the data record, or simply to have BAIID recorders that can flag such occurrences. In the event that multiple tests are taken within a short period of time, the probation officer may need to question the client.

4.10.2.3 Pass Fail

A record of pass and fail attempts can provide a relatively accurate record of alcohol use and compliance. A record with no or few fail attempts could have several meanings, but a test with many fail attempts should be of concern to court personnel. If a client is expected to abstain from drinking, then the test results may be used as a confrontation tool.

4.10.2.4 BrAC Level

BrAC level documentation may be of interest to the probation officer or the alcohol counselor for examining the consumption pattern of the driver. A significant number of failed attempts combined with elevated BrACs demonstrates that the client is not meeting program goals. Many DWI programs for offenders require abstinence, so this information may be used in conjunction with self-reports, and may possibly be used as a means of confronting the client with their behavior.

4.10.2.5 Start and Stop

A record of start and stop times, and perhaps a record of miles traveled would allow for court personnel to observe if the vehicle had actually been driven when a test was successfully completed. Thus, if a client stopped at a bar to drink and left the vehicle idling, a lengthy trip with no miles driven would be recorded. Such a situation should ''flag'' court personnel to a possible circumvention attempt.

4.10.2.6 Service Reminder

It is recommended that the unit itself have the capability to warn the client of an upcoming calibration check. Such a provision has been stated previously in paragraph 2.4.3.T. A combination of a warning light and/or audible sound during the power-up sequence would be sufficient.

5.0 Commentary on Utility Specifications

5.1 Accuracy

The accuracy specification for utility specifications is important for the convenient operation of the interlock device. In all likelihood, a BAIID that easily passes the accuracy safety specification (high end) will also pass without difficulty the accuracy utility specification (low end). Nevertheless, the acceptability of an interlock program may be damaged if too many legitimate users with legal BACs are prevented from driving. Similarly there are certain climatic or personal safety occasions when any lockout of a zero BrAC driver would be unacceptable. Therefore, this may be of concern to the certifying authority.

Several of the States and/or Provinces have included in their standards a requirement to test for the contaminating influence of things such as mouthwash, coffee, tobacco breath, unburned hydrocarbons, and breath mints. Some of these items are mentioned as complaints among users of the interlock devices in the California Pilot Program, also some of the State and Provincial testing programs have identified false positives particularly with mouthwashes, and tobacco smoke. The possible influence of these substances should not be regarded as a significant concern, however, when minor precautions are taken. While the influence of such substances on BrAC can be real when introduced in a concentrated, atypical fashion, their influence under normal use conditions should not be a serious concern. Since it is the driver who is inconvenienced by use of such interfering substances, it is in the driver's interest to avoid situations which give rise unnecessarily to false positives.

The type of alcohol-sensing technology used in a BAIID will influence the specificity of measurement. A passive fuel-cell device held in an engine exhaust stream measures about .01% w/v. The semiconductor technology is less specific, and may read higher. The ability of BAIIDs to correctly detect and reject non-ethanol contaminants is adequate but not perfect. It is for these reasons that the alcohol setpoint recommended for adoption not be set below .025% w/v.

On another matter, acetone, an exhalable product of starvation, diabetic ketosis, and a few other medical conditions, has a history of being cited as a source of false positive readings on breath-test devices for alcohol. These too, however, are well-known by forensic specialists as unlikely sources of error for fuel cell and infrared technologies.

5.2 Clearance Rates

The interlock devices should be promptly clear of residual breath alcohol after a failed start attempt. The BAIID should reset to zero and be ready for a retest within 3 minutes providing the BrAC from the previous test was less than or equal to 0.05% w/v. This stipulation is added because a very high reading due to either high true BrAC, or high mouth alcohol, would place an unreasonable burden on the BAIID possibly requiring the addition of a more costly purge blower. The added time that might be required to re-test a person with a BrAC in excess of .05% w/v ranks low in priority of concerns.

5.3 Warm-Up

The breath sample must be evaluated in a fairly constant environment, therefore some time must be allowed for the sampling head to stabilize.

5.4 User Display

As with all electronic devices that must interface with a human, the thoughtful presentation of information can mean the difference between nervous confusion and easy acceptance. In the case of the interlock device, certain pieces of information must be made crystal-clear to the user. As noted in the utility specification, these are: When to blow, when to wait, when to start the vehicle, when an extended lockout condition occurs, when to seek service. These basic functions should be clearly evident to a minimally-trained user.

5.5 Temperature Package

The specification of acceptable temperature extremes is a case where some compromises need to be made. The specification stipulates −40 °C to +85 °C. The range is regarded as the normative range for automobile exposure by the SAE, but forty degrees below zero is not conducive to vapor measurement, and there has been concern expressed that uncommonly high temperatures would require inclusion of costly circuit protections. These extremes are special conditions but they are also apt to occur.

Certification evaluation procedures should be designed around not only device compliance to the specification, but also the possibility of device's exposure to different problems, such as power and/or physical damage through mishandling. For example, at the low end, if a manufacturer allows a

sampling head to be brought inside on chilly nights, there ought to be some provision made to ensure that it is safe from impact damage should it be dropped or mishandled.

The vehicle battery could conceivably be used as a source of power for a heating appliance, but this may impose extreme current demands upon batteries that must turn an engine at temperatures below −20 °C. An external portable power source of some kind might be a solution to this problem.

5.6 Altitude

In 1974 it was demonstrated that when a fixed volume of breath is obtained and analyzed at some ambient pressure, alcohol concentration is independent of barometric pressure. However, most of the current BAIIDs make use of a semiconductor sensor where the sensitivity to alcohol is a function of the oxygen concentration, and oxygen *does* decrease as altitude increases. As a result, as altitude goes up (and oxygen concentration goes down), measured BrAC increases.

Failure to meet a utility specification, however, is not a safety-related problem, but for residents of much of the non-coastal western U.S. it could be a source of some inconvenience. Two alternatives may be worthy of consideration.

On one hand, the manufacturer could conceivably adjust the basal sensitivity of the BAIID so that residents of cities above 5,000 feet, such as Salt Lake City, Denver, Flagstaff, Santa Fe etc. are able to start their vehicles without problems. Alternatively, states with high country may want to consider adopting an alcohol setpoint less restrictive than the minimal, such as .03% w/v, so that false positive problems are minimized from the beginning.

6.0 Commentary on Optional Features

6.1 BrAC Display

The manufacturer or the state's own information provided to the user ought to instruct the user on the meaning of BrAC values and the likely relation between quantity of alcohol consumed, BrAC, and the average decay time for a BrAC curve.

Inclusion of such information may well provide an educational service to the user/offender about the relationship between drinks consumed, time since drinking and BrAC.

6.2 Sample Acceptability Criteria

In a NHTSA Technical Report (DOT HS 807 333) issued November 1988, three BAIID manufacturers had their products evaluated at the Transportation Systems Center in Cambridge, MA. In general it was found that the device which requires a temperature criterion be met was most successful in preventing a pass condition following the introduction of air samples from non-human sources; the device which required a minimum pressure requirement be met was most successful in preventing a pass condition following the introduction of filtered samples.

An ideal unit might require a unique breath signature from each stipulated user, however, the costs of such technology could be prohibitive at this time. Nevertheless, a standard which provides for the breath physical characteristics, or other aspects of the stipulated users, could greatly reduce the attractiveness of circumvention strategies which are now generally quite easy to employ.

Protection from tampering and circumvention is the most challenging and potentially the most costly aspect of an interlock device.

6.3 Smoke

Tobacco smoke, or some constituents of tobacco smoke, increase the proportion of false positives detected by semiconductor type alcohol measuring devices. Other sources of smoke may well do likewise, and in the presence of high smoke environments, programs may be affected by this interference. States which have seasonal smoke from burning fields may want to adopt this element of certification testing.

6.4 Dust

Dust is a theoretical source of false negatives, the kind of error that might allow an elevated BrAC to go undetected due to absorption of the alcohol by the dust. Dust is incorporated in the Australian Standard and the certification tests there for in-vehicle alcohol devices require 5 hrs. exposure to dust. States which are prone to dust devils or dust storms may want to consider inclusion of a dust testing protocol in their standards.

6.5 Alert Conditions

The rolling retest has been adopted as a countermeasure for two different types of circumvention as described in paragraph 3.8.2.

A subject of long discussion has been the proper consequences for a failure under conditions of a failed rolling retest. If an impaired driver is identified during a rolling retest there are few safe alternatives that would remove the driver from the road. These alternatives fall into the following general categories * * *

- Alert the police and other drivers sharing the road via a conspicuous signal (lights, horns *etc.*) This alternative was considered and rejected as a safety hazard.
- Alert the police via covert transmitted signal. This alternative is good from a safety perspective, but might at this time be difficult from a cost or programmatic perspective.
- Merely warn the driver at the time of the infraction with a unique auditory or visual cue, but upon failure, prevent further use of the vehicle after a safe period (*e.g.*, 5 days) has passed. This is the only practical alternative at this time.

Most efforts to warn the public at the time of a failed test using installed equipment such as lights and/or horns would add new safety hazards. The wiring of an additional less alarming signal (*e.g.*, a single light source with a unique characteristic) that would be specific to a failed interlock test may be desirable but would add to costs to the BAIID and require public education costs as well.

If this class of circumvention were deemed prevalent enough to warrant the expense of a surveillance system, it may be that a low cost CB transmitter signal could be designed that would serve an alerting function. A specific signal, possibly one that sweeps across several frequencies, could alert nearby police cruisers or truckers. Alternatively, citizens could provide location and direction to police which, if capable of responding, could investigate.

One of the pervasive problems faced by interlock manufacturers is to design a device that finds a compromise between sophistication and affordability. The main problem of program evaluators is to honestly evaluate a BAIID program as it exists, not a program that may someday exist.

At this early phase in the development of BAIID technology, if the marriage of the device and the program to monitor the device is not thoughtfully conceived and controlled, the future of the technology may be forestalled, and the possibility of a technical monitoring approach to alcohol-involved highway safety risks abruptly ended. The specification will need to evolve to a more ideal state if the BAIID devices and monitoring programs of today can be shown to warrant such additional development.

APPENDIX A—CERTIFICATION TEST SUMMARY

Section	Test description	BAIID	Comment/purpose
1.1.1.T	Accuracy Tests for Safety Specification—Unstressed.	A, B ..	Unstressed criterion is 90% accuracy at .01% w/v above setpoint; 20 tests, ≥18 must lock.
1.1.2.T	Accuracy Tests for Safety Specification—Stressed.	A, B ..	Stressed criterion is 90% accuracy at .02% w/v above setpoint; 20 tests, ≥18 must lock.
1.2.T	Breath Sampling	A, B ..	Minimum sample of 1.5 L
1.3.T	Calibration Stability	A, B ..	Shall be last test in the series, use daily for duration up to 10 weeks. Test according to ¶1.1.2.T at end, then recalibrate and test with ¶1.1.1.T.
1.3.1.T	Lockout Evaluation	A, B ..	BAIID must lockout if not serviced by 7 days after recommended service interval.
1.4.T	Power	A, B ..	11 and 16 VDC test followed by ¶1.1.2.T
1.5.1.T	Temperature Ranges	A, B ..	Test according to ¶1.1.2.T at −40 °C, −20 °C, +70 °C, +85 °C

APPENDIX A—CERTIFICATION TEST SUMMARY—Continued

Section	Test description	BAIID	Comment/purpose
1.5.2.T	Temperature Extremes, −40 °C and +85 °C.	A, B	Test for manufacturer recommended exceptions to meeting the specification inextreme conditions.
1.6.1.T	Vibration 1	A	10 to 30 to 10 Hz, 5 min., .76mm displacement.
1.6.2.T	Vibration 2	B	30 to 60 to 30 Hz, 5 min., .38mm displacement.
1.6.3.T	Vibration 3	A, B	As above, 3 directions.
1.6.4.T	Vibration 4	A, B	Test by ¶1.1.2.T.
1.6.5.T	Post shake inspection	A, B	Search for damage.
1.7.T	RFI/EMI	A, B	5 cm from in-vehicle appliance, test with ¶1.1.2.T.
1.8.1.1.T	Tampering/Power loss	A, B	Test for interrupt detection.
1.8.1.2.T	Tampering/Circuit	A or B	Test for hotwire or push start detection ability on an installed device.
1.8.2.1.T	Circumvention/Non-human sample	A, B	80% correct criterion, test with ¶1.1.2.T.
1.8.2.2.T	Circumvention/Filtered samples	A, B	80% correct criterion, test with ¶1.1.2.T.
1.8.2.3.T	Circumvention/Rolling Retest	A or B	Test to determine retest conditions fulfill criteria of (1) retest interval, (2) failed lockout in 5 days.
1.9.T	Sample free restart	A, B	Test internal timer.
1.10.T	Data recorder	A, B	Evaluate output.
2.1.1.T	Accuracy/Precision for Utility Specification—Unstressed.	A, B	Basic criterion is 90% correct pass for .01% w/v below setpoint; 20 tests, 18 or more must not lock.
2.1.2.T	Stressed Utility Tests	N/A	No tests proposed, if needed recommend .02% below setpoint at 90% accuracy criterion.
2.2.T	Clearance Rate Test	A, B	Reset time after .05% w/v.
2.3.T	Warm Up Test	A, B	Time to ready at −20 °C, also see test ¶1.5.1.T.
2.4.1.T	Display readability	A/B	Note.
2.4.2.T	Display user feedback	A/B	Note.
2.4.3.T	Display warnings	A/B	Note.
2.5.T	Low temperature provisions	A/B	Determine that a provision is made for extremes if criteria of ¶1.1.T not met −40 °C.
2.6.T	Altitude	A/B	Warn user.
3.1.T	BrAC readout	A/B	Optional.
3.2.T	Sample acceptability	A, B	Optional.
3.3.T	Smoke	A, B	Optional.
3.4.T	Dust	A, B	Optional.
3.5.T	Alert Conditions	A, B	Optional.

Appendix B—Equipment List

1. *Simulators,* such as National Draeger Mark IIA or comparable, must be used with care to avoid problems due to condensation in transfer lines and to prevent overpressure effects. They shall not be exposed to temperatures below about 20 °C or above 34 °C except for momentary use. Guidelines for preparation of alcohol solutions are available from the National Safety Council's Committee on Alcohol and Other Drugs. 444 North Michigan Avenue, Chicago, Illinois 60611.

2. *Thermometers* must be traceable to the National Institute of Standards and Technology (NIST). The thermometer used for checking the simulator shall be readable to 0.1 °C.

3. *Alcohol,* ethanol, shall be U.S.P. reagent quality absolute or NIST Standard Reference Material.

4. *Temperature Chamber,* such as Thermotron FM35 CHM, may be walk-in type or bench top type.

5. *Shake Table* must be capable of vibrating load of about 4.5 kg (10 lb) through the specified schedule. It shall be programmable.

6. *DC power supply,* such as Hewlett Packard 6023 A or comparable, must be able to deliver the range of automotive voltages specified.

7. *Air syringes,* one 1L and one 3L for one class of spirometric measures.

8. *Spirometer,* approximately 9L capacity.

9. *Leak-tight box,* for collecting vented air, shall be large enough to accommodate BAIID and be fitted with suitable connections for spirometer, mouthpiece, and power to BAIID. Similarly outfitted plastic bag may be used if satisfactory seal and operation can be demonstrated using the air syringe and spirometer.

10. *Evidential breath tester,* such as CMI Intoxilyzer (infrared) and Lion Alcometer SD–2 (fuel cell). Both types may be desirable since the peak accuracy ranges differ.

11. *Hoses,* flexible, various diameters.

12. *Glassware,* class A volumetric for preparation of alcohol solutions.

[FR Doc. 06–1423 Filed 2–14–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16334; Notice 2]

Decision That Nonconforming 2000 Audi A8 and S8 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of decision by National Highway Traffic Safety Administration that nonconforming 2000 Audi A8 and S8 passenger cars are eligible for importation.

SUMMARY: This document announces a decision by the National Highway Traffic Safety Administration (NHTSA) that certain 2000 Audi A8 and S8 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S. certified version of the 2000 Audi A8 and S8 passenger cars), and they are capable of being readily altered to conform to the standards.

DATES: This decision was effective January 6, 2004. The agency notified the petitioner at that time that the subject vehicles are eligible for importation. This document provides public notice of the eligibility decision.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified as required under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies, LLC (JK) of Baltimore, Maryland (Registered Importer 90–006), petitioned NHTSA to decide whether 2000 Audi A8 and S8 passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on October 24, 2003 (68 FR 61034) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

One comment was received in response to the notice of petition, from Volkswagen of America, Inc. (VW), the U.S. representative of the vehicle's original manufacturer. VW addressed issues it believed J.K. had overlooked in describing alterations necessary to conform 2000 Audi A8 and S8 vehicles to FMVSS No. 208 *Occupant Crash Protection*.

The petition stated that the vehicles are capable of being readily altered to comply with FMVSS No. 208 *Occupant Crash Protection* by reprogramming the seat belt warning system so that it activates in the required manner. The petition also stated that the vehicles are equipped with automatic restraint systems consisting of dual front air bags, and with combination lap and shoulder belts at the front and rear outboard designated seating positions that are self-tensioning and release by means of a single red pushbutton. The petition described these components and systems as being identical to those found on U.S. certified vehicles.

In its comment, VW acknowledged that the modifications identified in the petition are appropriate, but noted that additional modifications are necessary. Specifically, VW stated that the driver's seat belt buckle needs to be replaced to provide the required seat belt visual and audible warnings, and knee bolsters would have to be installed to conform to the injury criteria requirements of FMVSS No. 208.

The agency accorded J.K. an opportunity to respond to the issues raised by VW. In its response, J.K. stated that if after reprogramming, the visual and audible warnings do not activate correctly, the driver's side seat belt buckle will be replaced. J.K. further noted that all vehicles imported into the United States must be inspected for the presence of conforming knee bolsters.

Based on these considerations, the agency decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–424 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA has decided that 2000 Audi A8 and S8 passenger cars that were not originally manufactured to comply with all applicable FMVSS are substantially similar to 2000 Audi A8 and S8 passenger cars originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable FMVSS.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. E6–2177 Filed 2–14–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from BST Associates (WB616—2/6/2006) for access to certain data from the Board's 1987–2004 Carload Waybill Samples. A copy of the request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 565–1541.

Vernon A. Williams,

Secretary.

[FR Doc. E6–2118 Filed 2–14–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning its collection titled ''Securities Offering Disclosure Rules—12 CFR Part 16''.

DATES: You should submit written comments by: April 17, 2006.

ADDRESSES: You should direct all written comments to the Communications Division, Attention: 1557–0120, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov.*

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0120, by mail to U.S. Office of Management and Budget, 725, 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary

Gottlieb or Camille Dickerson, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0202), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. You can inspect and photocopy the comments at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC, between 9 a.m. and 5 p.m. on business days. You can make an appointment to inspect the comments by calling (202) 874–5043.

SUPPLEMENTARY INFORMATION: The OCC is requesting comment on the following proposed information collection:

Title: Securities Offering Disclosure Rules—12 CFR Part 16.

OMB Number: 1557–0120.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB approve its estimates, revised to correct a calculation error.

The requirements in part 16 enable the OCC to perform its responsibilities relating to offerings of securities by national banks by providing the investing public with facts about the condition of the bank, the reasons for raising new capital, and the terms of the offering. The public needs this information to make an informed decision on whether such securities are an appropriate investment.

- Section 16.3 requires a national bank to file its registration statement with the OCC.
- Section 16.4 requires a national bank to submit certain communications not deemed an offer to the OCC.
- Section 16.5 provides exemptions for certain offers or sales of banks securities, which, in turn, require certain filings.
- Section 16.6 requires a national bank to file documents with the OCC and to make certain disclosures to purchasers in sales of nonconvertible debt.
- Section 16.7 provides exemptions for certain nonpublic offerings, which, in turn, require certain filings.
- Section 16.8 provides small issues exemptions, which, in turn, require certain filings.
- Section 16.15 requires a national bank to file a registration statement and sets forth content requirements for the registration statement.
- Section 16.17 requires a national bank to file four copies of each document filed under part 16, and requires filers of amendments or revisions to underline or otherwise indicate clearly any changed information.
- Section 16.18 requires a national bank to file an amended prospectus when the information in the current prospectus becomes stale, or when a change in circumstances makes the current prospectus incorrect.
- Section 16.19 requires a national bank to submit a request to the OCC if it wishes to withdraw a registration statement, amendment, or exhibit.
- Section 16.20 requires a national bank to file current and periodic reports as required by sections 13 and 15(d) of the Exchange Act and those provisions of the Sarbanes-Oxley Act that the OCC is authorized to enforce.
- Section 16.30 requires a national bank to include certain elements and follow certain procedures in any request to the OCC for a no-objection letter.

Estimated number of respondents: 30.

Estimated number of responses: 73.

Average hours per response: Varies.

Estimated total burden hours: 2,190 hours.

Likely respondents: National banks.

Type of Review: Revision.

Affected Public: Businesses or other for-profit.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 7, 2006.

Stuart Feldstein,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. E6–2084 Filed 2–14–06; 8:45 am]

BILLING CODE 4810–33–P

Corrections

Federal Register

Vol. 71, No. 31

Wednesday, February 15, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[No. 2006–4]

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

NATIONAL CREDIT UNION ADMINISTRATION

Interagency Advisory on the Unsafe and Unsound Use of Limitation of Liability Provisions in External Audit Engagement Letters

Correction

In notice document 06–1189 beginning on page 6847 in the issue of Thursday, February 9, 2006, make the following correction:

On page 6847, in the first column, the document heading is corrected to read as set forth above.

[FR Doc. C6–1189 Filed 2–14–06; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
February 15, 2006

Part II

Department of State

22 CFR Parts 96, 97, and 98

Hague Convention on Intercountry Adoption; Intercountry Adoption Act of 2000; Accreditation of Agencies; Approval of Persons and Intercountry Adoption—Preservation of Convention Records; Final Rules

DEPARTMENT OF STATE

22 CFR Part 96

[Public Notice 5296]

RIN 1400–AA–88

Hague Convention on Intercountry Adoption; Intercountry Adoption Act of 2000; Accreditation of Agencies; Approval of Persons

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State (the Department) is issuing a final rule on the accreditation and approval of agencies and persons in accordance with the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Convention) and the Intercountry Adoption Act of 2000 (the IAA), after review of public comments received in response to the Department's September 15, 2003 issuance of a proposed rule. The Convention and the IAA generally require that agencies and persons be accredited or approved to provide adoption services for intercountry adoptions when both countries involved are parties to the Convention, and the IAA requires that the Department designate one or more qualified accrediting entities to accredit and approve agencies and persons. Today's new action establishes the accreditation and approval standards for agencies and persons that accrediting entities will use; establishes requirements applicable to potential accrediting entities; and establishes a framework for the Department's oversight of accrediting entities, agencies, and persons. This action is a necessary step toward bringing the Convention into force for the United States.

DATES: This rule is effective March 17, 2006. Information about the date the Convention will enter into force is indicated in the text of the final rule.

FOR FURTHER INFORMATION CONTACT: Corrin Ferber at 202–736–9172 or Anna Mary Coburn or Lisa Vogel at 202–736–9081. Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Convention is a multilateral treaty that provides a framework of safeguards for protecting children and families involved in intercountry adoption. It was developed under the auspices of the intergovernmental organization known as the Hague Conference on Private International Law (the Hague Conference).

The United States signed the Convention on March 31, 1994, and the President transmitted the Convention to the Senate for its advice and consent on June 11, 1998. (S. Treaty Doc. 105–51 at III (1998)). Differing versions of implementing legislation for the Convention were introduced in both the Senate and the House of Representatives in 1999 and were subsequently referred to the appropriate committees. The Senate Foreign Relations Committee held hearings on October 5, 1999, and issued a committee report on S. 682 (Report of the Senate Committee on Foreign Relations on the Intercountry Adoption Act of 2000, 106th Cong. 2nd Sess., S. Rep. No. 106–276 (2000)). The House International Relations Committee held hearings on H.R. 2909 on October 29, 1999, and also issued a committee report. (Report of the House Committee on International Relations on the Intercountry Adoption Act, 106th Cong. 2nd Sess., H.R. Rep. No. 106–691 (2000)).

On September 20, 2000, the Senate gave its advice and consent to the ratification of the Convention and, at about the same time, Congress enacted the implementing legislation for the Convention, the Intercountry Adoption Act of 2000 (the IAA)), Public Law 106–279, 42 U.S.C. 14901–14952. Consistent with U.S. policy on ratification of treaties and the Senate's advice and consent to ratification, the United States will not ratify the Convention until the United States is able to carry out its obligations under the Convention (See Senate Declaration for Convention Article 22(2) (146 Cong. Rec. S8866 (daily ed. Sept. 20, 2000)). Thus, although this Final Rule is effective in 30 days, except as otherwise indicated in the text of the rule, the Convention will not enter into force immediately upon passage of the 30 days.

The Convention gives party countries a choice about whether to rely exclusively on public authorities or to use private bodies to complete certain Central Authority functions listed in the Convention. If the Convention country chooses to use private bodies, the private bodies must be accredited agencies (nonprofit adoption service providers) or approved persons (for-profit and individual adoption service providers). The Senate's advice and consent to the ratification of the Convention, taken together with the IAA, establish that the United States will use accredited agencies and approved persons (referred to within this preamble as ''adoption service providers'' where appropriate) to perform certain U.S. Central Authority functions under the Convention. Other Central Authority functions will be performed, as appropriate, by the Department or by other governmental authorities such as the Department of Homeland Security (DHS).

The purpose of this final rule is to establish the regulatory framework for

the accreditation and approval function required under the Convention and the IAA. In developing the rule, we conducted an extensive preliminary public input phase, discussed at *http://www.hagueregs.org,* to garner adoption community input and to engage in a dialogue with stakeholders. On September 15, 2003, the Department published in the **Federal Register** a proposed rule on the accreditation and approval of agencies and persons (68 FR 54064). For a more detailed discussion of the Convention, the IAA, and the Department's basis for the rule, see the preamble to the proposed rule. The Department held a further meeting on October 28, 2003 to answer questions regarding the proposed rule. The initial 60-day deadline for submitting comments was extended 30 days, to December 15, 2003.

Since issuing the proposed rule, the Department has also initiated a selection process to recruit and identify qualified accrediting entities to accredit agencies and approve persons. (The Department solicited candidates by mailing Requests for Statements of Interest to the adoption licensing and child welfare services authorities of each State and to all private nonprofit organizations that had expressed interest in providing accreditation/approval services. It also posted the information soliciting statements of interest from qualified candidates on its Web site.) The Department thoroughly reviewed all applications received by the deadline of April 30, 2004. The Department met with qualified candidates in March 2005 to begin negotiating agreements to designate accrediting entities. (70 FR 11306, March 8, 2005). The Department will publish all agreements designating accrediting entities in the **Federal Register**, as required by the IAA.

Also published in today's **Federal Register** is the final rule for part 98 of title 22 of the CFR. It provides the rule for the preservation of Convention records by the Department and DHS. Separate rules, which are still under preparation, will establish intercountry adoption procedures under the Convention and the IAA's amendments to the Immigration and Nationality Act (INA).

II. The Department's Implementation of the Convention and the IAA

Consistent with the IAA and the Convention, this rule creates an accreditation/approval system that does not displace State licensing of adoption service providers, but that does create new Federal requirements for agencies and persons handling adoption cases between the United States and other countries party to the Convention. A number of commenters expressed a variety of concerns about the Department's approach to implementing the Convention and the IAA through an accreditation scheme that relies on accrediting entities selected by the Department to oversee and monitor adoption service providers. In response to those concerns, we want to reiterate the guiding principles behind this rule and the Federal accreditation scheme it creates.

A. Accrediting Entities

Many commenters essentially objected to the use of accrediting entities, preferring the Department to assume direct responsibility for accreditation of agencies and approval of persons. It would be inconsistent with the IAA, however, for the Department to assume such a role. The IAA accreditation scheme provides for the Department to select and designate one or more accrediting entities to perform this function.

Some commenters sought more robust provisions controlling the conduct of accrediting entities. The IAA sections on accrediting entities left the Department discretion to negotiate by agreement how an accrediting entity will perform its accreditation duties. It would be unrealistic and unworkable to address these issues in the rule. We therefore have included in the final rule some provisions that will govern designated accrediting entities, but much of the conduct of accrediting entities will be governed by agreements in addition to these regulations. The use of agreements is consistent with the statute and provides the flexibility needed to handle relationships with multiple accrediting entities, which may differ in ways that require different provisions governing their relationships with the Department.

B. Accreditation and Approval Standards

We received a wide range of public input on what accreditation/approval standards should be excluded from or added to subpart F of the rule (and correspondingly subpart N on temporary accreditation). Our responses to comments on specific standards are contained in the section-by-section discussion. We respond here, however, to a number of general concerns repeatedly expressed by commenters by explaining our overall conception of the accreditation standards.

We used the central purposes of the IAA and the Convention as a guide throughout the development of the standards for accreditation and approval. These purposes are to protect the rights of, and prevent abuses against, participants in the adoption process in Convention cases, and to ensure that such adoptions are in the children's best interests. In addition, the IAA seeks to improve the ability of the Federal Government to assist prospective adoptive parent(s) in Convention cases involving the United States.

The standards in subpart F are based on the Convention and the IAA, particularly section 203(b). Where the Convention or the IAA speaks broadly, we have also sought to reflect current norms in adoption practice, as made known to us during the development of the rule.

In particular, the standards in subpart F reflect a focus on ensuring that agencies and persons provide adoption services with an individual child's best interests as the foremost goal. The standards also cover key areas of concern to adoptees, birth parents, and adoptive parents, such as financial transparency, ethical conduct in determining if a child is eligible for adoption and in obtaining medical records for a child, and sound social work practices when providing training and information to prospective adoptive parent(s). In reviewing the overall impact of the rule on agencies and persons in light of comments suggesting that the standards be loosened, we retained standards we consider necessary for implementing the Convention's and the IAA's goals of protecting participants in Convention adoptions.

Some commenters wanted the standards in subpart F to be cast as specific licensing criteria that must be met in all cases rather than as accreditation standards that must be ''substantially'' complied with. As explained in our response to comments on § 96.27 of subpart E, the Department believes that an accreditation model based on substantial compliance is more consistent with the regulatory approach the IAA contemplates. The performance-based standards created by subpart F (and subpart N) are the type of flexible standards common to the accreditation field generally, and thus are appropriate for implementing the IAA. The process of accreditation gives an accrediting entity discretion to identify problems in an agency's or person's operations and to provide an opportunity for correction.

C. Enforcement

A number of commenters sought to have the Department play a primary role in enforcing substantial compliance by agencies and persons with the

accreditation standards. This view is inconsistent with the IAA, however, which dictates that the primary responsibility for oversight of agencies and persons lies with the accrediting entities. The accrediting entities will have discretion to determine which adverse action is appropriate in light of the particular standards in subpart F (or N) with which the agency or person is not in compliance. The Department may be required to intervene if the accrediting entity, after consultation with the Department, fails, or refuses, to take adverse action against an agency or person. The types of adverse actions and who can take them (accrediting entities or the Department) under what circumstances are covered in subparts K and L of the rule.

The Department was asked to permit ''penalties'' for failure to be in substantial compliance with the rule, other than the enforcement mechanisms called adverse actions created by the IAA, and to tie the violation of particular standards to particular penalties. We have not made such changes. The rule provides the full range of ''penalty'' options provided in the IAA for disciplining agencies and persons. Because the IAA mandates a substantial compliance model of accreditation, the rule does not require that accrediting entities impose particular penalties for violation of particular standards.

Other commenters raised a number of concerns related to the notice that an agency or person would receive of an adverse action, and the options that an agency or person would have for protesting the imposition of the adverse action. While the IAA limits review procedures that are available, the Department has made a number of clarifications in the final rule to address these concerns. (See the section-by-section discussion of subparts K and L.) The rule now clearly provides that an accredited agency or approved person will have either notice that it may be faced with an adverse action and an opportunity to show it is not warranted or, if notice is not provided, an equivalent after-the-fact opportunity to show that the action should be withdrawn. The rule also clarifies that the accrediting entity that imposed an adverse action can always withdraw the adverse action, if it determines that the action was imposed based upon mistake of fact or otherwise in error.

D. Concerns About Conduct in Convention Countries

We received many comments requesting that the Department address specific problems in countries of origin. As Central Authority, the Department may be able to influence another Convention country's practices via diplomatic efforts and the provision of technical assistance. It is outside the scope of our authority, however, and inconsistent with the Convention's allocation of responsibilities between a country of origin and a receiving country, for us to impose specific rules on Convention countries. Therefore, we have not changed the final rule to cover conduct by other Central Authorities or their competent (public) authorities. As described in section III, subsection A, below, however, we have changed the standards U.S. agencies and persons will need to meet in using private providers in Convention countries. The standards, as changed, tie the accreditation of agencies and approval of persons to whether they have adequate arrangements in place to ensure that, when acting as a primary provider, they can provide ''all adoption services in cases subject to the Convention'' in a manner consistent with the IAA and the Convention. (See IAA section 203(b)(1)(B)). They are not intended to interfere with the allocation of responsibilities between countries party to the Convention.

III. Overview of Major Changes and Provisions in the Final Rule

Discussed here are changes and provisions in the final rule that we believe are of particular interest to the public. A more thorough response to individual comments, and more complete discussion of significant changes made to the rule in response to comments, appears below in the section-by-section analysis. In addition to changes made in direct response to comments received by the Department, we have also made a number of changes for technical and policy reasons, the more significant of which are brought to the public's attention in the section-by-section analysis. We have made an effort to highlight such changes in the general discussion at the beginning of each subpart, with a brief explanation of why the Department considered them necessary. Changes of a purely technical nature (for example, changes made to conform to changes in other sections, for grammatical reasons, or to ensure consistency throughout the regulations) are not exhaustively identified because we believe they are self-explanatory.

A. Primary Providers and Supervised Providers

Many commenters were concerned about the rule's coverage of supervised providers, both in the United States and overseas. Many urged that the U.S. accredited/approved primary provider be made responsible for any foreign providers that it selects and uses in the country of origin, whether public, accredited by the foreign country, or private and unaccredited.

In response to these concerns, we modified §96.14 of subpart C to increase the supervisory responsibilities of primary providers in the accreditation context. As discussed below at section III, subsection B.4, however, we removed provisions from subpart F that would have required a primary provider to assume the legal responsibility for tort, contract, and other civil claims against supervised providers and to carry liability insurance for its supervised providers. The final rule is not intended to have any effect on the allocation of legal responsibility for tort, contract and other civil claims. We also added concrete examples at §96.15 of subpart C to help explain, generally, the circumstances that require an adoption service provider to be accredited, temporarily accredited, approved, supervised, or exempted.

The IAA in section 201(a) provides that, if an agency or person is providing adoption services ''in connection with a Convention adoption in the United States,'' it must be accredited, approved, or under the supervision of an accredited agency or approved person (with limited exceptions set forth in section 201(b)). The proposed rule established the general principle of a primary provider—that is, one accredited agency or approved person responsible for ensuring the provision of all adoption services in the Convention adoption case.

Under the proposed rule, a primary provider could work with accredited agencies or approved persons in the United States, or overseas with entities accredited by a Convention country or public authorities of a Convention country, without supervising or being responsible for their acts. The primary provider also was not responsible for supervising exempted providers or public domestic authorities in the United States. The primary provider was responsible only for supervising the acts of private agencies, persons, or other entities that were providing adoption services without any Convention accreditation or approval status.

We have kept the requirement in the final rule that the primary provider is responsible for all supervised providers on a case, but we have broadened the kinds of private entities that the primary provider must supervise. There are some differences in the standards that govern the primary provider's use of

other providers in the United States and in Convention countries. These differences reflect both the structure of the IAA and the Convention's allocation of responsibilities between Convention countries. The common objective of these standards, however, is to implement the goals of the Convention and the IAA of protecting participants in the adoption process and ensuring adoptions are conducted in the best interests of the child.

1. U.S. Supervised Providers

The rule now requires that the primary provider ensure that other U.S. accredited agencies or approved persons providing adoption services in a case are complying with the standards applicable to U.S. supervised providers. That is, § 96.14(b) now requires that a primary provider treat all other agencies and persons it is using to provide adoption services in the United States on a case as supervised providers, regardless of their accreditation/approval status, unless the provider qualifies as an exempted provider or a domestic public authority.

We made this change to the proposed rule in response to expressed concerns about how an accrediting entity could evaluate the performance of an agency or person if, as primary provider, the agency or person was not required to supervise any accredited agencies or approved persons that it was using to provide adoption services in a particular case. If an accrediting entity finds that a primary provider has provided inadequate supervision and, as a result, the actions of an agency or person that the primary provider is using to provide services—whether accredited or approved or not—reveal non-compliance with the standards in these regulations applicable to the use of supervised providers, then the accrediting entity may take adverse action against the primary provider.

2. Foreign Providers

Under the final rule, the primary provider must now treat all non-governmental foreign providers, including agencies, persons, or entities accredited by a Convention country, that it uses to provide adoption services as supervised providers consistent with §96.46(a) and (b), unless the foreign provider performs a service qualifying for verification under §96.46(c) (consents, child background studies and home studies). We believe that this approach accommodates our concerns, expressed in the preamble to the proposed rule, that primary providers would have practical difficulty supervising entities in another Convention country. This approach was chosen to ensure that primary providers do not inappropriately rely on accreditation by a foreign Central Authority as a guarantee of conduct. It is consistent with the fact, recognized in this rule and the IAA, that accreditation and approval within the U.S. system cannot guarantee good conduct.

The verification requirement in §96.46(c) recognizes, however, that as a practical matter, a primary provider will not be able to supervise contemporaneously all adoption services that might occur in a Convention country. A limited number of adoption services will generally have been performed in a Convention country before a U.S. primary provider has been identified: In an incoming case (child immigrating to the United States) the consents to adoption and child background study will often have been prepared before intercountry adoption to the United States is specifically contemplated; in an outgoing case (child emigrating from the United States) the home study will often have been prepared before the prospective adoptive parent(s) determine that they wish to pursue intercountry adoption from the United States.

To recognize these possibilities and to avoid requiring that such services are re-performed under supervision—that is, to avoid creating additional costs and delaying adoption placements, which could, in turn, disadvantage U.S. prospective adoptive parent(s) seeking to adopt abroad and children seeking placements—the rule adopts a different approach to the primary provider's oversight of these services. The standard set forth in § 96.46(c) requires the primary provider to verify that these three adoption services, when provided by private, non-governmental providers, were performed in the Convention country consistently with the requirements of the Convention and any other applicable local law. (In many countries all three of these services will be performed by public or competent authorities, for whom a primary provider is not required to be responsible.) The verification standard of § 96.46(c) will reinforce the protections in the Convention and U.S. law relevant to the performance of these three adoption services. (The Convention requires, for example, that all home and child background studies not prepared by a governmental authority be prepared under the responsibility of an accredited body, and that competent authorities of the state of origin ensure that consents meet Convention requirements. U.S. governmental authorities will also address the issue of consent in determining visa eligibility.)

A primary provider will always have the option of treating providers of services that qualify for verification under the § 96.46(c) standard as supervised providers under § 96.46(a) and (b) instead, assuming that substantial compliance with those standards is feasible. This might occur, for example, if a primary provider has a long-standing supervisory relationship with a particular Convention country adoption service provider.

As was the case in the proposed rule, primary providers are not required to treat Central Authorities, or other foreign public authorities, as foreign supervised providers. This is consistent with the scope of the Department's authority, and the Convention's allocation of responsibilities.

B. Accreditation and Approval Standards

We received many comments on the proposed standards on insurance, social service personnel qualifications, blanket waivers of liability, and the primary provider's liability for its supervised providers. We want to explain revisions we have made to those standards in the final rule.

1. Standard on Professional Liability Insurance

The IAA requires that the standards include an insurance standard. The proposed rule provided that an agency or person maintains insurance in a minimum amount of no less than $1,000,000 per occurrence, annually. In the preamble to the proposed rule, we solicited comments on the insurance provision from insurance experts, actuaries, associations, and agencies and persons, and explicitly encouraged agencies and persons to have their insurance providers comment on this provision. We received a number of conflicting comments on the insurance provision, with some commenters opposing the inclusion of any standard, others stating that professional liability insurance is simply unavailable, and others maintaining that, even if professional liability insurance were available, the premiums would make it too costly for them to operate. Other commenters said insurance would be affordable and available.

In light of the conflicting public comment on this issue, the Department made good faith efforts to research further the issues of availability, feasibility, and costs of professional liability insurance for adoption service providers. The Department hired an insurance expert who contacted

adoption service providers, insurance brokers and agents, wholesalers, insurance industry service organizations and insurers. The report of the insurance expert (redacted of confidential business information), which helped inform the basis of the insurance requirement in the final rule, is now part of the public record and can be found at *http://www.travel.state.gov/family/adoption*.

The Department has determined that it is appropriate in §96.33(h) of the rule to set a standard of a minimum level of professional liability coverage in the amount of $1 million in the aggregate, rather than per occurrence. This standard means that an adoption service provider should have, at a minimum, a policy that would make available $1 million in coverage annually for all covered claims. We believe that this standard is sufficient to protect adoption service providers, children, and parents, and that the insurance market is likely to respond to this regulation by making such coverage available to adoption service providers. The rule continues to provide that this is a minimum standard; the agency or person will have to take into account whether its individual risk profile warrants additional professional liability coverage, or other types of insurance.

2. Social Service Personnel Qualifications

The proposed rule provided as a standard that supervisory social service personnel have a master's degree in social work (MSW) or master's degree in a related human service field (with some exceptions for those already working in the field). Non-supervisory social service personnel would have to hold an MSW or master's degree, or a bachelor's degree in addition to experience. The proposed rule also provided for individuals performing home studies or child background studies to have a minimum of an MSW or master's degree in a related human service field.

Most of the comments that we received strongly opposed any standard providing for social service personnel, other than those in supervisory positions, to have an MSW or master's degree. A number of comments indicated that finding qualified MSWs for low-paying positions available within nonprofit adoption agencies was next to impossible. Agencies and persons in rural, isolated areas expressed concern about the general lack of MSWs in non-urban locations. Commenters also indicated that experience with adoption practice typically was a better prerequisite for handling intercountry adoption cases than holding an MSW.

In response to these comments we revised the standard in the final rule. The final rule, at §96.37, retains the qualifications for supervisory social service personnel in the proposed rule. Qualifications for non-supervisory social service personnel have been slightly modified to provide for an MSW, master's, or a bachelor's degree in any field and prior experience in family and children's services and adoption. We have eliminated entirely any provision that home study preparers or child background study preparers have an MSW or a master's degree in a related human service field.

3. Waivers of Liability

The proposed rule would have set a standard prohibiting adoption service providers from asking clients to sign blanket waivers of liability. Prospective adoptive parent(s) expressed concerns about being asked to sign broad waivers of liability as part of their contracts with agencies and persons. On the other hand, we were also told that waivers are common to the adoption field, particularly in the face of increasing litigation over the tort of wrongful adoption, and were given copies of sample waivers. Some commenters insisted that agencies and persons could not obtain affordable liability insurance unless their contracts with clients identified risks inherent to the adoption process and asked clients to assume those enumerated risks. Other commenters suggested that the Department provide a boilerplate waiver clause.

We concluded that a standard prohibiting blanket waivers is not warranted, and have revised the standard in § 96.39(d) to permit an agency or person to include a waiver of liability, if consistent with applicable State law. This approach defers to the adoption service provider's own assessment of risks and benefits in asking a client to sign a waiver, and to State law, rather than imposing a Federal standard prohibiting waivers. To address the major concerns about extremely broad waivers that exempt all conduct, § 96.39 provides that any such waivers comply with State law and additionally be limited and specific and based on risks that have been discussed and explained to the client in the adoption services contract.

4. Primary Provider Liability for Acts of Supervised Providers

The proposed rule included standards in § 96.45(c) (Using supervised providers in the United States) and § 96.46(c) (Using providers in Convention countries) that would have provided for the primary provider to assume tort, contract, and other civil liability to the prospective adoptive parent(s) for the supervised provider's provision of the contracted adoption services and for maintenance of a bond, escrow account, or liability insurance to cover liability risks arising from the use of supervised providers.

Many commenters strongly opposed these provisions as impractical and unworkable, and some questioned the statutory basis behind them. In their view, a court should be allowed to allocate responsibility in any particular circumstance, and the Department should not attempt to allocate responsibility in the standard. Other commenters questioned the availability of the kind of insurance contemplated to cover the risk of using supervised providers, especially overseas. A number of commenters, including insurance providers and agents, said that insurance coverage for supervised providers would push the cost of adoption services beyond the reach of many potential prospective adoptive parents, while others said that such insurance would be affordable.

The final rule does not include these provisions, or related provisions on indemnification that were proposed at §§ 96.45(d) and 96.46(d). Primary providers may choose how to allocate risk with their contractual partners—that is, their supervised providers—within the framework of existing laws on liability. Under this rule, however, primary providers will still be held responsible for their supervision of supervised providers in the accrediting entity's assessment of whether they are providing adoption services in substantial compliance with this rule, the IAA, and the Convention.

C. Complaint Registry

The provisions of the final rule related to the Complaint Registry differ from those that appeared in the proposed rule. The Department still intends to establish a Complaint Registry to support the accrediting entities in fulfilling their oversight responsibilities and the Department in its own oversight role. The Department at this time no longer intends, however, that the Complaint Registry will be an independent entity with which the Department will have an agreement. As reflected in subpart J on oversight through review of complaints, the Complaint Registry will be a system established by the Department to assist the accrediting entities and the

Department in their oversight functions. The Department's current operational plan is for the Complaint Registry to collect complaints and make them available to the appropriate accrediting entity for action. Accrediting entities will be required to establish written procedures for recording, investigating, and taking action on complaints referred to them through the Complaint Registry. Upon completion of an investigation, accrediting entities will have to provide written notification to the complainant and the Complaint Registry of its findings and any actions taken.

The Department will be able to review complaints and actions taken by the accrediting entity and take independent action if appropriate. The Complaint Registry will maintain records of complaints, track compliance with deadlines, generate reports, and perform other functions as the Secretary determines appropriate. We believe that subpart J provides adequate flexibility to assign additional functions to the Complaint Registry if experience with the system indicates that additional functions would be useful or necessary.

IV. Section-by-Section Discussion of Comments

This section provides a detailed discussion of comments received on the proposed rule, and describes changes made to the proposed rule. Two general points should be kept in mind in reading this discussion. First, we refer generally to actions of the ''Department'' pursuant to the rule. The rule itself refers to actions of the ''Secretary,'' as the official named in the IAA, but the day-to-day exercise of the Secretary's functions has been delegated and will be exercised by other Department officials, primarily in the Bureau of Consular Affairs. (See § 96.2 of the rule, defining ''Secretary.'') Second, particularly while discussing the accreditation/approval standards of Subpart F, we frequently talk in terms of actions that agencies or persons ''must'' take and ''requirements'' they must meet. Readers should keep in mind, however, that the accreditation/approval model looks for ''substantial compliance'' with the standards. Thus, within the substantial compliance framework for accreditation that the IAA establishes, statements that actions are required mean that agencies or persons will have to take such actions in order to be judged in full compliance with the standard in question. The accrediting entities will be responsible for developing methods of assessing and weighting compliance with individual standards, subject to the Department's approval, to determine whether accreditation, temporary accreditation, or approval can be granted and maintained.

Subpart A—General Provisions

Subpart A is organized in the same way as in the proposed rule, and includes § 96.1 (Purpose); § 96.2 (Definitions); and §96.3 (Reserved).

The Department has made a number of changes to §96.2 (Definitions), in response to public comment, which are described below. In addition, we have revised the definition of ''approved home study'' to clarify that a supervised provider could also complete a home study. We have changed the term ''public body'' to ''public domestic authority'' and the term ''public authority'' to ''public foreign authority,'' without making a substantive change in the definitions, to make the distinction between the two terms, which is primarily geographic, more transparent. We also added language to the definition of ''supervised provider'' to clarify that the definition applies regardless of the local terminology used to refer to private providers, so long as the private individual or organization is providing adoption services under the supervision and responsibility of a primary provider, and to the definition of ''exempted provider'' to clarify that such providers are providing services within the United States.

Section 96.2—Definitions

1. Comment: One commenter recommends that the Department add a definition for ''accreditation'' to clarify that the regulations address accreditation only as it relates to Convention adoptions. The commenter requests that the Department specifically state that the regulations do not affect any voluntary accreditation process for non-Convention intercountry adoptions.

Response: These regulations do not affect any voluntary accreditation process for non-Convention intercountry adoptions. It is not necessary to add a definition of ''accreditation'' to §96.2, however, because § 96.12 makes clear that agencies and persons need to be accredited or approved under these regulations only for purposes of Convention adoptions.

2. Comment: One commenter requests that the Department establish a definition of ''adoptability'' for U.S. adoptees who are placed internationally.

Response: Each U.S. State determines the criteria to use to determine if a child is eligible for adoption in that State. Because these regulations are not intended to preempt State law on eligibility for adoption, we have not added a definition of ''adoptability.''

3. Comment: One commenter requests clarification as to whether the IAA definition of ''adoption'' is intended to create a Federal law definition of adoption. The commenter suggests that the Department define an ''adoption,'' for the purposes of the regulations, as the judicial or administrative procedure that establishes a legal parent-child relationship for all purposes between a minor and an adult who is not already the minor's legal parent and that satisfies the requirements for the minor child's (i) immigration to the United States or (ii) emigration from the United States pursuant to the IAA and other relevant provisions of the INA and Federal law.

Response: The definition of adoption in the rule is applicable only under these regulations, in the context of the Convention and the IAA. The Department does not have authority under the IAA to create a Federal definition of adoption to be used outside of the context of the Convention and the IAA. Overall, the definition of adoption, for these regulations, is designed to provide guidance to agencies and persons on what constitutes an adoption for Convention purposes so that they can determine if they must be accredited or approved to provide adoption services in a particular case. The definition is also useful in distinguishing between ''post-placement'' and ''post-adoption.'' In response to this comment, the Department is not creating a definition of adoption that will have any broader applicability but it is replacing the term ''formal act'' with the phrase, ''the judicial or administrative act'' in the definition of adoption. This change clarifies that the definition defers to State and Convention country choice of judicial or administrative procedures for adoption. The definition still requires that the legal relationship between a child and his or her former parents be terminated, but is not meant to affect informal relationships between a child and his or her former parents, such as those that develop from an open adoption, or any State law that allows a stepparent to adopt a child without terminating the parental rights of the stepparent's spouse, or any State law that grants an adopted child inheritance rights from a former parent even after a legal adoption.

4. Comment: Many commenters request that the Department clarify the difference between ''post-placement monitoring'' and ''post-adoption services.'' Another commenter requests

that the Department explicitly state that ''post-placement services'' are services provided by exempted providers in connection with a Convention adoption. One commenter asks the Department to clarify whether providing assistance with U.S. immigrant visa processing is a post-adoption service or post-placement monitoring. There were conflicting comments as to whether or not ''post-adoption services'' include the provision of supportive services to adoptive families to promote the well-being of adoptees and families, the stability of adoptive placements, and the prevention of adoption disruption or dissolution as well as monitoring and reporting.

Response: Post-placement monitoring is an ''adoption service'' under the IAA. Because of this an adoption service provider must be accredited, temporarily accredited, approved, or operate as a supervised provider to provide post-placement monitoring in a Convention adoption case in the United States. Post-adoption services, however, are not adoption services under the IAA, and an agency or person would not have to comply with the accreditation/approval requirements to perform them in a Convention adoption case. To distinguish between post-placement monitoring and post-adoption services, the Department has added new definitions of ''post-placement'' and ''post-adoption.'' ''Post-placement'' is defined as the period of time after a grant of legal custody or guardianship of the child to the prospective adoptive parent(s) or to a custodian for the purpose of escorting the child to the identified prospective adoptive parent(s), and before an adoption. An example of ''post-placement monitoring'' (an adoption service) would be a pre-adoption home visit or report monitoring the child's adjustment to the new pre-adoptive home. By contrast, ''post-adoption'' means after an adoption; in cases in which an adoption occurs in a Convention country and is followed by a re-adoption in the United States, it means after the adoption in the Convention country. Any of the following would be examples of a ''post-adoption service,'' if provided after the child's adoption: providing mental and physical health services for the adopted child; providing assistance in filling out post-adoption reports required by certain Convention countries; and sponsoring support groups for adopted children or adoptive parents. The Department understands that there is also some confusion over which post-placement services are ''adoption services.'' ''Post-placement monitoring'' is one of the enumerated ''adoption services'' in the IAA. Post-placement monitoring encompasses services related to evaluating the continuing fitness of the child's adoptive placement. For example, monitoring how a child is adjusting to his or her new family or visiting the prospective adoptive parent(s) to ensure that they are able to care for the particular needs of the child and to determine whether the placement is still in the child's best interests is post-placement monitoring.

If, on the other hand, the post-placement service is not related to the adoptive placement, then it is not the adoption service of ''post-placement monitoring.'' An agency or person is not performing a post-placement ''adoption service,'' for example, if it provides post-placement counseling to a family. Assisting with U.S. immigrant visa processing is not included in Section 3(3) of the IAA's definition of ''adoption services,'' and is not an activity that is within the scope of these regulations.

5. *Comment:* Some commenters request that the Department add ''post-adoption services'' to the list of adoption services, and hence to the activities subject to these regulations. One commenter states that its members believe post-placement services, whether provided before or after legalization of an adoption, should be provided by qualified personnel. The commenter suggests a revision of the Department's definition of ''adoption services'' to include providing required periodic reports to the child's country of origin, or any other post-adoption services required by the child's country of origin.

Response: Section 3(3) of the IAA, which defines adoption services, does not include post-adoption services as an adoption service. (In fact, while at least one draft of H.R. 2909, the bill that became the IAA, included post-adoption services in the definition of adoption services, post-adoption services were not included in the definition in the IAA as enacted.) Services provided after an adoption is dissolved are also not ''adoption services,'' as defined in the IAA, because they are provided after an adoption has occurred, so they are post-adoption services.

Some of the comments on this issue reflected a concern about ensuring compliance with post-adoption reporting requirements imposed by countries of origin, particularly if parents are unwilling to cooperate, or do not maintain contact with agencies and persons. The Department encourages agencies and persons involved in Convention adoptions to comply with all applicable post-adoption reporting requirements. We note that countries of origin that require post-adoption reports may stop working with U.S. agencies and persons that cannot produce the post-adoption reports. While this is a potentially serious issue, it is not one that can be addressed through the accreditation process or these regulations.

6. *Comment:* Several commenters request more specific definitions addressing who can provide adoption services. They want to know if ''adoption helpers'' or ''advisors'' are covered. Another commenter requests that the Department's definition of ''adoption services'' be revised to exclude simply assisting a country of origin's public foreign authority. Another commenter requests that the Department define ''adoption services'' to include the services of ''unlicensed facilitators''—individuals that essentially provide adoption services (like the preparation of adoption paperwork and the arrangement of child-matching services for parents in foreign countries).

Response: Whether the activities of an adoption service provider are subject to the accreditation/approval standards in this rule turns solely on whether the private individual or entity is providing a defined ''adoption service,'' and not on the identity of the private individual or entity, the term used to refer to the private individual or entity, or the entity on whose behalf the services are provided. If people who call themselves ''adoption helpers'' or ''advisors'' are performing in the United States any of the services enumerated in the adoption services definition, they must be accredited, temporarily accredited, approved or supervised, or exempted once the Convention goes into force for the United States. A primary provider must also ensure that, with respect to adoption services performed in a Convention country, any private individuals or entities it is using to perform adoption services in a Convention case—regardless of identity, the term used to refer to them, or on whose behalf the services are performed—are supervised, unless they are performing a service qualifying for verification under § 96.46(c). Examples of different adoption services, and instances in which providers of such services must be accredited, temporarily accredited, approved, supervised, or exempted, have been added to the regulation to help clarify this point in § 96.15 of subpart C.

7. *Comment:* One commenter requests that the Department clearly define ''suspension'' and ''cancellation'' as they relate to adverse actions against

accredited agencies and approved persons. Specifically, the commenter asks whether an accredited agency or approved person will have to transfer its adoption cases to another entity during a period of ''suspension.'' The commenter requests that the Department replace the term ''suspension'' with ''probation, with required corrective action'' to clarify that the accredited agency or approved person does not have to transfer its cases while correcting noted problems.

Response: The Department has not substituted ''probation, with required corrective action'' for ''suspension'' because suspension is the term used in the list of adverse actions contained in § 202(b)(3) of the IAA. Nor have we added definitions of suspension and cancellation to subpart A, because the consequences of suspension and cancellation are adequately explained in subpart K. Section 96.77 of subpart K provides that the suspended agency or person must consult with the accrediting entity about whether or not a particular suspension requires that an agency or person to transfer all its Convention cases. Please see response to comment 1 on §96.75 for further information.

8. *Comment:* Several commenters request that the Department elaborate on the definition of ''child welfare services.'' They note that providers of these services are exempt from the accreditation/approval process. One commenter requests that the Department provide more specific examples of providing child welfare services. Another commenter asks whether the definition is limited only to services provided by public child welfare agencies or whether it also includes broader services such as after-school activities, YMCA programs, or summer respite.

Response: ''Child welfare services'' are defined in § 96.2 as services, ''other than those defined as ''adoption services,'' which are designed to ''promote and protect the well-being of a family or child.'' Thus, when attempting to decide what constitutes a ''child welfare service,'' it is necessary first to determine if the service is an ''adoption service.'' If not, then the service could be a ''child welfare service.'' Some examples of child welfare services are: providing mental or physical health services for adoptive parents or adoptees; promoting adoption through general programs, but not providing adoption services in specific cases; conducting support groups for adoptive parents or adoptees; and providing temporary foster care for children who are awaiting adoption. These examples are not an exhaustive list of ''child welfare services.'' The definition of ''child welfare services'' is not limited to public child welfare agencies. Private organizations, such as the YMCA, are exempt from the accreditation/approval process if they only provide services for children or parents that are not adoption services.

9. *Comment:* One commenter seeks clarity for the definition of ''exempted provider.''

Response: ''Exempted providers'' and ''exempted activities'' are explained in more detail in the subpart C of this final rule. We have changed the definition of ''exempted provider'' to clarify that a social work professional or an organization may perform a home study or a child background study (or both) in the United States in a Convention adoption, as an exempted provider, as long as the social work professional or organization is not currently providing and has not previously provided any other adoption service in the same case. The definition is consistent with § 96.13 of subpart C. See responses to comments 1 and 2 in § 96.13.

10. *Comment:* Several commenters recommend that the regulations define what constitutes a complaint, so that the number of frivolous complaints will be limited. Several commenters also recommend that the word ''complaint'' be changed to the word ''grievance,'' in order to signify a more formal concern, and offer definitions of grievance. Several commenters also recommend that the regulations require complaints to be filed in writing. One commenter further requests that the regulations be amended to reflect that anonymous complaints may not be filed.

Response: We have not added a definition of complaint, but have made other changes to the final rule to respond to the concerns expressed, in the definition of ''Complaint Registry,'' in § 96.41, and in subpart J. Section 96.41 now makes clear that complaints must be signed and dated to be lodged with an agency or person, and must refer to activities or services that the complainant believes raise an issue of compliance with the Convention, the IAA, or the regulations implementing the IAA. Subpart J similarly now makes clear that complaints that may be filed through the Complaint Registry are written documents submitted by a complainant that concern an accredited agency or approved persons (including their use of supervised providers), and that raise an issue of compliance with the Convention, the IAA, or the regulations implementing the IAA. An agency or person's response to other kinds of ''complaints'' will not be relevant to the accreditation/approval process.

11. *Comment:* Some commenters question how the Complaint Registry will be established.

Response: The Department has modified the definition of ''Complaint Registry'' (§ 96.2) to make it clear that it will be a system created by the Department intended to receive, distribute, and monitor complaints relevant to the accreditation or approval status of agencies and persons. The functions of the Complaint Registry are addressed in § 96.70 of subpart J.

12. *Comment:* Commenters suggest that the Department add a definition of the term ''displacement'' to § 96.2, defining displacement as the placement of an adoptee in an out-of-home care environment without terminating parental rights, for example, so that the child may receive, for example, mental health in-patient treatment.

Response: Because what the commenters describe as ''displacement'' would occur post-adoption, and thus would fall outside the scope of these regulations, we have not added a definition of displacement to the rule.

13. *Comment:* Several commenters request clarification or revision of the definitions of ''dissolution'' and ''disruption'' in § 96.2. One commenter suggests that the Department and Congress (in the IAA) reversed the meaning of these terms. Another commenter requests that the definitions of ''disruption'' and ''dissolution'' be revised to state explicitly that a disruption or dissolution must be included in the overall statistics of adoption failures only if it occurs while an adoptee is physically residing with a family in their home at the time of the disruption or dissolution. Similarly, another commenter is concerned that the Department's definition of ''disruption'' is too broad and could force agencies and persons to generate reports in cases in which the disruption had benign causes. One commenter suggests that the definition of ''disruption'' should be revised to address more specifically the ''disruptions that occur after a child has left his or her country of origin.'' A commenter suggests the following definitions: '' 'Disruption' means adoptive placement that does not finalize in an adoption. 'Dissolution' means dissolving the adoptive placement through termination of parental rights.''

Response: In defining ''disruption'' to refer to an interrupted adoptive placement, the Department followed § 104(b)(3) of the IAA, which used ''disruption'' in the same manner. We

also believe that the majority of people involved with intercountry adoptions use the terms ''disruption'' and ''dissolution'' as we have defined them. Therefore, the Department is not changing the definitions of ''disruption'' and ''dissolution'' to, in effect, reverse them.

The Department has, however, revised the definition of ''disruption'' and has modified related definitions and reporting requirements, to clarify when a ''disruption'' will need to be reported. ''Disruption'' is now defined to mean the interruption of a placement for adoption during the ''post-placement'' period. ''Post-placement'' now is defined so that a ''disruption'' will need to be reported only when it takes place after legal custody or guardianship of the child has been transferred to the prospective adoptive parent(s) or a custodian for transport to the prospective adoptive parent(s), but before the adoption is completed. Thus, an agency or person would not need to report a ''disruption'' if a prospective adoptive family decided not to pursue an adoption during an informal placement pending transfer of legal custody of the child. On the other hand, a ''disruption'' would need to be reported if it happened after legal custody or guardianship of the child was transferred, even if the child had not yet left his or her country of origin.

We have also modified the definition of ''dissolution'' to reflect the addition to § 96.2 of a definition of ''post-adoption,'' and to respond to the suggestion that we make specific reference to termination of parental rights. The final rule defines ''dissolution'' to be the termination of the adoptive parent(s)' parental rights after an adoption.

14. *Comment:* One commenter requests that the Department add to § 96.2 a definition of a foreign Convention ''accredited body.'' Another commenter similarly suggests adding a definition for ''foreign partner providers''—entities accredited or approved by a Convention country and providing one or more adoption services in a Convention case. The commenter also recommends defining ''foreign governmental partner providers,'' as public authorities of a Convention country (excluding courts) providing one or more adoption services in a Convention case.

Response: The Department believes that it is unnecessary to add a definition for foreign accredited bodies or ''foreign partner providers.'' Subpart C explains when foreign providers accredited by a Convention country must operate under the supervision and responsibility of a primary provider. Please see response to comment 1 for § 96.14. We also believe that the definitions of ''public foreign authority'' and ''competent authority'' are adequate to refer to public authorities of Convention countries.

15. *Comment:* A commenter requests that the Department make clear, in the definition of ''legal services,'' that it is not regulating the actions of foreign attorneys. The commenter also cautions the Department that it cannot regulate attorneys licensed in the United States because they are regulated by the States. Thus, the commenter believes that the Department is incorrect when it asserts (in the preamble to the proposed rule) that a lawyer who secures necessary consents to the termination of parental rights and to adoptions in Convention cases must be approved or must secure the consents as part of, or under the supervision and responsibility of, an accredited agency, temporarily accredited agency, or an approved person.

Response: The IAA and these regulations are not intended to preempt State laws regarding licensing of attorneys; on the other hand, under the IAA, persons, including lawyers, who provide adoption services in the United States, as opposed to legal services, must comply with the IAA. Section 201(b)(3) of the IAA states that the provision of legal services by a person ''who is not providing any adoption service in the case'' is exempt from the accreditation/approval requirements. The exemption does not apply, however, if the attorney is providing (non-exempt) adoption services in the case. An adoption service, as defined in the IAA, provided by a U.S. attorney, or through a U.S. accredited/approved provider's use of the services of a foreign attorney, in connection with a Convention case would need to provided in compliance with any applicable requirements of the IAA and these regulations, regardless of any professional standards or licensing or other laws that would also govern the actions of the attorney. We note, however, that the rule would allow a primary provider to treat a foreign attorney that provided only the adoption service of obtaining consents in a Convention country as either a supervised provider, consistent with §§ 96.45(a) and (b), or as performing a service qualifying for verification under § 96.46(c)).

Subpart B—Selection, Designation, and Duties of Accrediting Entities

Subpart B is organized in the same way as in the proposed rule, and includes § 96.4 (Designation of accrediting entities by the Secretary); § 96.5 (Requirement that accrediting entity be a nonprofit or public entity); § 96.6 (Performance criteria for designation as an accrediting entity); § 96.7 (Authorities and responsibilities of an accrediting entity); § 96.8 (Fees charged by accrediting entities); § 96.9 (Agreement between the Secretary and the accrediting entity); § 96.10 (Suspension or cancellation of the designation of an accrediting entity by the Secretary); and § 96.11 (Reserved).

We have made a number of changes to this subpart in response to public comment, including changes to §§ 96.6, 96.7, and 96.10, which are discussed below. We also deleted from § 96.4(a) material on soliciting accrediting entities that is no longer relevant and made additional clarifying corrections to § 96.4(a), to make plain that accrediting entities will be designated by the Department in an agreement that will also govern operations of the accrediting entity. Finally, we made conforming changes to § 96.7(b), to ensure consistency with changes made to the definition of Complaint Registry in § 96.2 and to subpart J.

Section 96.4—Designation of Accrediting Entities by the Secretary

1. *Comment:* Several commenters are concerned that having too few accrediting entities will create a monopoly, with accrediting entities charging exorbitant accrediting fees and possibly putting smaller agencies out of business. Other commenters encourage the Department to limit the number of accrediting entities to avoid accrediting entities competing for the business of the very people they are supposed to be regulating.

Response: Section 202(a)(1) of the IAA states that the ''Secretary shall enter into agreements with *one* or *more* qualified entities'' that will perform the duties of an accrediting entity (emphasis added). The IAA permits public entities to act as accrediting entities in part to increase the number of possible accrediting entities. (See IAA section 202(a)(2)(B)). The Department has used extensive outreach efforts to solicit a broad pool of interested parties to apply to become accrediting entities. We will not know the actual, final number of accrediting entities until we are able to enter into agreements with qualified applicants, but it is clear the number will be small, at least initially. There is no reason at this time to limit the number by regulation. The quality and fairness of the accrediting entities will not be addressed by the number of such entities but by the Department designating accrediting entities that are

qualified under the IAA and that meet the criteria established in these regulations and through the Department's ongoing oversight, including its oversight of accreditation fees, which under the IAA and these regulations may not exceed the costs of accreditation.

2. *Comment:* Some commenters are concerned that the Department did not provide public entities enough time or information to allow them to submit Statements of Interest to become accrediting entities. These commenters suggest that the Department should individually contact all public entities that do adoption licensing and invite them to apply. Similarly, many commenters want the regulations to mandate that every State licensing authority act as an accrediting entity for Convention purposes.

Response: The IAA does not authorize the Department to require all qualified public entities to become accrediting entities, but the Department did contact each relevant State authority and encourage it to apply to become an accrediting entity. The Department expects to provide additional open application periods for public entities or private nonprofit entities to apply to become accrediting entities at a future time.

3. *Comment:* Commenters believe that the Department should not delegate the function of accrediting agencies and approving persons to accrediting entities. These commenters suggest that the Department should act as the single accrediting entity for all agencies and persons, in order to bring uniformity to the application of accrediting standards and promote an emphasis on the best interests of the children.

Response: The IAA requires that the Department enter into agreements with qualified public entities or qualified nonprofit organizations to be accrediting entities. The Department cannot act directly as an accrediting entity.

4. *Comment:* Several commenters recommend that the Department, rather than an accrediting entity, investigate allegations of improper conduct involving agencies and persons overseas.

Response: Under the IAA, accrediting entities are given primary responsibility for overseeing the conduct of the agencies and persons they accredit or approve. As explained in the response to comment 1 on § 96.6, below, the accrediting entity will be responsible for monitoring agencies it accredits or temporarily accredits and persons it approves, including by monitoring their use of all supervised providers, including foreign supervised providers. The Department is required to take the direct action of suspension or cancellation against an accredited agency or approved person only if the accrediting entity has failed or refused, after consultation with the Department, to take appropriate enforcement action itself.

5. *Comment:* Some commenters request that the Department prohibit current State licensing authorities from becoming accrediting entities. One commenter suggests that these public domestic authorities have not been responsive in the past to the concerns of adopting parents. A commenter also asserts that the IAA was enacted in part because States were unable to regulate adoption effectively, and apparently is concerned that state licensing authorities that are accrediting entities will assert sovereign immunity, or in any event will not accord ''consumers'' sufficient ''due process.'' This commenter seems to contemplate suits against accrediting entities by ''consumers'' rather than the kind of judicial review of adverse action specifically addressed by the IAA.

Response: As stated above, the IAA permits qualified public entities to become accrediting entities and the Department intends to consider qualified public entities as potential accrediting entities. The Department believes the commenters' concerns about the likely responsiveness of public entities will be addressed by the Department designating public entities as accrediting entities only if they demonstrate that they are qualified under the IAA and can meet the criteria established in these regulations. The Department will also maintain ongoing oversight of all accrediting entities. In particular, the Department's agreements with the accrediting entities, which will be published in the **Federal Register**, will address accountability of the accrediting entities to the Secretary. Also, in this regard, the public will be able to complain about the performance of any accrediting entity to the Department, and the Department will be able to suspend or cancel the designation of any accrediting entity, as set forth in § 96.10 of the rule. As well, subpart J ensures that the Department will be able to oversee the performance of all accrediting entities in resolving complaints against adoption service providers. As for the concern about sovereign immunity and the ''due process'' rights of ''consumers,'' nothing in these regulations is intended to create rights vis-à-vis any accrediting entity, whether public or private nonprofit. Consistent with this, we have made clear in § 96.12, as discussed in the response to comment 7 on this section, below, that the conferral of accreditation or approval does not make an accrediting entity responsible for any acts of any entity providing services in connection with a Convention adoption and does not guarantee that in any specific case an accredited agency or approved person is providing adoption services consistently with the Convention, the IAA, the regulations implementing the IAA, or any other applicable law.

6. *Comment:* Commenters recommend that the Department add a mechanism for the public to challenge a decision by the Department to designate or not designate a public domestic authority or nonprofit organization as an accrediting entity.

Response: The Department's selection of accrediting entities is committed to the Department's discretion. Moreover, section 504 of the IAA provides that the Convention and the IAA shall not be construed to create a private right of action to seek administrative or judicial relief, except to the extent expressly provided in the IAA. Once the Department has signed an agreement with an accrediting entity, however, anyone will be able to submit a complaint regarding an accrediting entity directly to the Department. Section 96.10(a) of these regulations requires that such complaints be considered in determining whether an accrediting entity's designation should be suspended or canceled.

7. *Comment:* Potential accrediting entities suggest that the Department add a provision to § 96.4 to limit the liability of accrediting entities. Without such a provision, potential accrediting entities have suggested that it will be difficult to hire or retain evaluators/peer reviewers and that the fees for accreditation will be significantly higher to cover the risk of third-party litigation.

Response: The Department never intended that accrediting entities be responsible for third-party tort claims, and does not believe that the IAA suggests that they should be. While we have not revised § 96.4, we have added language to § 96.12 to underscore that conferral and maintenance of accreditation, temporary accreditation, or approval is not tantamount to a guarantee that adoption services in specific cases are performed consistently with the Convention, the IAA, the regulations implementing the IAA, or any other applicable law but rather establishes only that the accrediting entity has concluded that the agency or person provides services in substantial compliance with the

applicable standards set forth in this part.

8. *Comment:* Two commenters suggest that an agency, person, or other interested party should have the opportunity to file a complaint against an accrediting entity or to challenge the accrediting entity's interpretation of a regulation or law.

Response: The Department will accept and collect complaints against accrediting entities pursuant to § 96.10(a). (The Department intends to post on its website instructions for how to submit a complaint against an accrediting entity.) As part of its ongoing oversight responsibility, the Department will investigate and consider any complaints against an accrediting entity when determining whether an accrediting entity's designation should be suspended or cancelled. Please note that the accrediting entities are responsible for investigating complaints against agencies and persons.

Section 202(c)(3) of the IAA allows an agency or person that has been the subject of an adverse action by any accrediting entity to seek Federal court review to have the adverse action set aside. For a description of the accrediting entity's role with regard to terminating adverse actions, see the responses to comment 1 for § 96.78 and comment 1 for § 96.79.

Section 96.5—Requirement that Accrediting Entity be a Nonprofit or Public Entity

1. *Comment:* Some commenters believe that the current language of § 96.5 implies that only existing organizations can become accrediting entities (which will only exacerbate the potential for a monopoly of accrediting entities). These commenters note that § 96.5 states that an accrediting entity must ''qualify'' as either a nonprofit organization or a public entity. They have asked for clarification that, in the future, accreditation will be open to new organizations as well. They also propose the following language: ''An accrediting entity must qualify as * * * (a) an organization or proposed organization described in section 501(c)(3) of the Internal Revenue Code of 1986.''

Response: The Department does not believe there is a need for new language to cover ''proposed'' accrediting entities. Although the first application period for those interested in becoming accrediting entities closed on April 30, 2004, there will be opportunities in the future for another round of applications. At that time, any public entities and nonprofits that express interest in becoming accrediting entities will have the opportunity to demonstrate that they meet the IAA criteria and that they have the capacity to perform the duties of an accrediting entity.

2. *Comment:* One commenter suggests that § 96.5(a) should be removed because there is no advantage to restricting for-profit entities from being accrediting entities.

Response: The Department is retaining § 96.5(a); its requirements come directly from § 202(a) of the IAA, under which for-profit private entities are not qualified to be accrediting entities.

Section 96.6—Performance Criteria for Designation as an Accrediting Entity

1. *Comment:* One commenter recommends that the Department modify the rule to require an accrediting entity to demonstrate that it has the ability to monitor the performance of accredited agencies and approved persons and their supervised providers.

Response: Section § 96.6(c) already required the accrediting entity to demonstrate to the Department that it can monitor the performance of accredited agencies, temporarily accredited agencies, and approved persons. In addition, the Department has modified §§ 96.6(c) and 96.7(a)(4) to make it explicit that accrediting entities must demonstrate that they are capable of monitoring a primary provider's use of supervised providers. We are aware that public entities and nonprofits designated as accrediting entities will likely have limited capacity to investigate overseas conduct directly, but we still expect them to use all reasonable means available to them of evaluating an accredited agency's or approved person's use of a supervised provider overseas. Such means would include, but not be limited to, document review and interviews to check that the agency or person is complying with the requirements of § 96.45 for using supervised providers in the United States and of § 96.46 for using supervised providers in Convention countries.

2. *Comment:* A commenter recommends that the Department revise § 96.6(f) insofar as it requires an accrediting entity that is not a public entity to demonstrate that it operates independently of any organization that includes agencies or persons that provide adoption services, noting that membership associations have played a valuable role in the development and support of accrediting entities. The commenter suggests that this section instead permit an accrediting entity to demonstrate that membership organizations will not have inappropriate influence on an accrediting entity, and that the accrediting entity has conflict-of-interest policies to address its relationships with membership organizations.

Response: We have not made the suggested change to § 96.6(f), but we have added a new § 96.6(i) providing that the accrediting entity must prohibit conflicts of interest with any agency, person, or membership organization that includes agencies or persons. With this addition it should be clear that § 96.6(f) does not bar accrediting entities that are not public entities from being associated with membership organizations, which we have been told can play a valuable role in helping to identify and maintain best practices within the field of adoption. At the same time, it is critical that accrediting entities be neutral and objective in evaluating agencies and persons and avoid the appearance of partiality. Potential problems may be avoided if accrediting entities operate independently of membership organizations with which they are associated and that include agencies or persons that provide adoption services. When the Department addresses conflict-of-interest issues in the agreements with the accrediting entities under § 96.6(h), it may include specific safeguards for accrediting entities' involvement with such membership organizations.

3. *Comment:* Some commenters ask that the Department expand the conflict-of-interest provisions of § 96.6(h) and set conflict-of-interest prohibitions through rulemaking. Another commenter requests that the Department specifically forbid any board member or employee who works with or for an agency or person or that is related to an agency or person from serving as a board member or employee of an accrediting entity. Another commenter suggests that the conflict-of-interest provisions should prohibit employees of accrediting entities or volunteer evaluators from becoming employed by an adoption service provider for at least one year after participating in any accreditation service for that provider.

Response: In response to these comments, the Department has modified the final rule to include two new conflict-of-interest provisions. First, we have added § 96.6(i) to require that an accrediting entity demonstrate that it prohibits conflicts of interest with agencies or persons or with any membership organization that includes agencies or persons. Second, we added § 96.6(j) to require accrediting entities to demonstrate that they prohibit individuals directly involved with the

site evaluation of a particular agency or person from becoming employees or supervised providers of that same agency or person for at least one year. Consistent with section 202(a)(1) of the IAA, the Department may establish other appropriate conflict-of-interest rules in the agreements with accrediting entities.

Section 96.7—Authorities and Responsibilities of an Accrediting Agency

1. *Comment:* One commenter suggests that the Department should require that accrediting entities investigate and respond to complaints about the supervised providers of accredited agencies and approved persons.

Response: As described in subpart J of these rules, the Complaint Registry will refer complaints about accredited agencies and approved persons to an accrediting entity. If a complaint involves conduct of a supervised provider, the accrediting entity will need to check whether the accredited agency or approved person that is acting as the primary provider has provided adequate supervision of its supervised providers. If an accredited agency or approved person does not provide adequate supervision of its supervised providers, it will be out of compliance with the standards in §§ 96.45 and 96.46 related to use of supervised providers. The accrediting entity may, if the complaint is supported, take adverse action against an accredited agency or approved person for reasons related to its use of a supervised provider. Section 96.71 requires accrediting entities to establish written procedures, including deadlines, for recording, investigating, and acting upon such complaints.

2. *Comment:* A commenter recommends that the Department add a statement to § 96.7(a)(7) to clarify that accrediting entities are permitted to report information relating to suspected child abuse to responsible State authorities.

Response: The Department does not believe it is necessary to add such language. Nothing in § 96.7(a) prevents an accrediting entity from reporting suspected child abuse to the appropriate State authorities, and this section does not change State laws regarding mandatory reporting of suspected child abuse. Furthermore, § 96.72(b)(3) requires an accrediting entity, after consultation with the Department, to refer to law enforcement authorities any substantiated complaints that involve conduct that is in violation of Federal, State, or local law.

3. *Comment:* Two commenters object to § 96.7(a)(8), on transfer of Convention cases, and ask that it be removed from the regulations. One of the commenters believes that this requirement puts accrediting entities in the awkward position of having to choose, or make recommendations regarding, which agencies and persons should be assigned the Convention cases that need to be transferred. The other commenter believes that it is essential for an accrediting entity to transfer Convention cases pursuant to § 96.7(a)(8), but recommends that the Department develop specific criteria for the selection of organizations to accept the transfer of these cases.

Response: We have modified § 96.7 (and provisions in subparts K, L, and N) so that accrediting entities are responsible for assisting the Department in taking appropriate action to help the agency or person transfer its Convention cases and adoption records. We now require in §§ 96.33(e) and 96.42(d) that agencies and persons have a plan to transfer their Convention cases and adoption records in the event that they become unable to continue performing Convention adoptions. If an agency's or person's plan fails, § 96.77(c) now requires accrediting entities to advise the Department, which, with the assistance of the accrediting entity, will coordinate efforts to identify other accredited agencies or approved persons to assume responsibility for the Convention cases and to transfer the records to other accredited agencies or approved persons, or to public domestic authorities, as appropriate. Corresponding comments were made to §§ 96.87 and 96.109.

Section 96.8—Fees Charged by Accrediting Entities

1. *Comment:* One commenter requests, for reasons of fairness, that the Department add a provision to the rules that mandates that fees for accrediting services will be uniform across geographic and jurisdictional boundaries. On the other hand, another commenter supports the Department's decision to permit fees to vary based on the relative size, geographic location, and volume of Convention cases of an accredited agency or approved person. Two other commenters express concern about the cost of accreditation.

Response: Section 202(d) of the IAA requires that, in approving the fees set by an accrediting entity, the Department ''consider the relative size of, the geographic location of, and the number of Convention adoption cases managed by the agencies or persons subject to accreditation or approval by the accrediting entity.'' Therefore, the Department does not have the discretion to ignore these factors when approving fees. In addition, while fees may not exceed the costs of accreditation, it is possible that some public entities that are designated as accrediting entities may choose to subsidize the cost of accreditation in their States, creating additional possible variance in fees. The Department will review and approve accrediting entity fee schedules for compliance with the IAA's requirements. Approved fee schedules will be publicly available, which should allow comparison of fees.

2. *Comment:* Several commenters suggest that it is difficult to comment on the fee provisions of the regulations because the Department did not provide a fee schedule or an estimate of the accreditation fees.

Response: This regulation does not address the actual fees of the accrediting entities, which are not subject to rulemaking, but only the factors the Department will consider in deciding whether to approve fee schedules that the accrediting entities propose. The regulation closely tracks the statute, leaving the Department flexibility to approve or disapprove proposed fees in light of the IAA's requirements. Given the wide range of possible fee structures and the start-up nature of the accreditation process, it is not practicable to further regulate on this issue at this time. Nor can the Department predict what the actual approved fees will be after the proposed fees are reviewed in light of the statutory and regulatory criteria.

3. *Comment:* A commenter suggests that § 96.8(d), which states ''[n]othing in this section shall be construed to provide a private right of action to challenge any fee charged by an accrediting entity'' was the equivalent of ''taxation without representation.''

Response: We have retained § 96.8(d) because it is consistent with section 504 of the IAA, which prohibits inferring private rights of action under the IAA and the Convention, except as provided by the IAA.

4. *Comment:* A commenter is concerned that, while the regulations require accrediting entities to investigate complaints about accredited agencies and approved persons, they provide for the allowable fees for such investigatory services to be predetermined and published in the fee schedule pursuant to § 96.8, the implication being that the fees may prove inadequate to support the necessary investigation. The commenter suggests that the Department remove the responsibility for investigating accredited agency and approved person

wrongdoing from accrediting entities and retain that responsibility for itself.

Response: The IAA requires that accrediting entities investigate and review complaints against the agencies and persons that they accredit or approve. Under section 204(b) of the IAA, the Department is only required to take adverse action against an agency or person if it finds that the accrediting entity has failed or refused, after consultation with the Department, to take appropriate enforcement action. Accrediting entities are supposed to incorporate anticipated costs, including the costs of complaint review and investigations and routine oversight and enforcement, into their proposed fees. When the Department approves fees, we plan to ensure that the accrediting entity has budgeted for such expenses. In addition, § 96.8(b)(2) provides that ''separate fees based on actual costs incurred may be charged for the travel and maintenance of evaluators.'' If an accrediting entity finds that its actual expenses are far greater than it had anticipated in creating its fee schedules, and its fees are not sufficient to cover its operating expenses, it may apply to the Department to change its fee schedule.

5. *Comment:* A commenter recommends that the Department allow accrediting entities to revise their fee schedules from time to time with the approval of the Department.

Response: Pursuant to § 96.8(a), accrediting entities may propose changes to an approved fee schedule, subject to approval by the Department. Upon approval, the modified fee schedule will be made available to the public.

6. *Comment:* A commenter thinks that the Complaint Registry should be funded through a portion of accrediting fees or by the Department. The commenter also believes that applicants for accreditation should pay a single, non-refundable fee for pre- and post-accreditation/approval work. The commenter requests, however, that the Department clarify that public bodies, such as State licensing authorities, are permitted to charge similar accrediting fees.

Response: Under this final rule, the Department retains the discretion to determine how to fund the Complaint Registry, including through fees collected by the accrediting entities and/or by the Department. Section 96.8 explains the costs which may be included in any fee for accreditation and approval, including costs for complaint review and investigation and routine oversight and enforcement, and requires any such fee to be non-refundable. The fee provisions apply to any accrediting entity, including a public entity that has authority under State law to collect accrediting fees.

Section 96.9—Agreement Between the Secretary and the Accrediting Entity

1. *Comment:* A commenter states that there must be a mechanism in the regulations to ensure consistent interpretations of the Convention, the IAA, and the Department's regulations by accrediting entities across geographic regions. The commenter requests that the Department outline uniform standards in the regulations.

Response: These regulations do create uniform accreditation standards and procedures for all accrediting entities. The criteria to be used by all accrediting entities are listed in subpart F (and with regard to temporarily accredited agencies in subpart N). The procedures applicable to the accreditation process are provided in subparts D through N, excluding F. The Department, in its oversight and monitoring role, will ensure that all accrediting entities adhere to these uniform standards and procedures. Please also see the response to comment 1 on § 96.66.

2. *Comment:* A commenter states that the Department should submit all matters listed in § 96.9 to a notice and comment period instead of setting them by agreement. The commenter states that these subjects are or may be crucial, and require an opportunity for public comment. The commenter further believes that it is unlikely that the regulations will be upheld in court unless the Department submits these matters to notice and comment.

Response: Section 202(a) of the IAA requires the Department to enter into agreements with one or more qualified accrediting entities under which such entities will perform certain duties in accordance with the Convention, the IAA, and these regulations. While the IAA requires that the standards to be used by the accrediting entities to accredit or approve agencies or persons to provide adoption services in Convention cases be set by regulation, it does not require that the Department's agreements designating accrediting entities be subject to public comment—such a requirement would be unworkable. Nonetheless, the Department will publish the final agreements in the **Federal Register**.

Section 96.10—Suspension or Cancellation of the Designation of an Accrediting Entity by the Secretary

1. *Comment:* A commenter asks how the Department will determine whether accrediting entities are in substantial compliance with the regulations. The commenter also requests clarification on how accrediting entities will be given notice of any complaints or concerns that may arise so that they have an opportunity to respond to the concerns and to correct any deficiencies.

Response: The Department has added § 96.10(b), which requires the Department to notify an accrediting entity in writing of any deficiencies in the accrediting entity's performance that could lead to the cancellation or suspension of its designation as an accrediting entity. The accrediting entity will be given an opportunity to demonstrate that suspension or cancellation is unwarranted, in accordance with mutually agreed upon procedures for handling complaints against the accrediting entity established in the agreement between the Department and the accrediting entity described in § 96.9. Section 96.10(c) now lists the factors that the Department will consider to determine whether an accrediting entity is substantially in compliance with these regulations, the IAA, and the Convention.

2. *Comment:* A commenter asks whether accrediting entities will be able to appeal any adverse decision by the Department regarding cancellation or suspension without having to go to court.

Response: Under section 204(d) of the IAA, an accrediting entity that is the subject of a final action of suspension or cancellation may petition the United States District Court for the District of Columbia or the United States District court in the judicial district in which the accrediting entity is located to set aside the action by the Department. The IAA does not provide for administrative review of cancellation or suspension of an accrediting entity by the Department. Section 96.10(b) of the rule now provides, however, that prior to the action being taken, an accrediting entity will be given an opportunity to demonstrate to the Department that suspension or cancellation would be unwarranted.

Subpart C—Accreditation and Approval Requirements for the Provision of Adoption Services

Subpart C is organized the same way as in the proposed rule, except that the Department has added a new § 96.15 (Examples) and consequently renumbered § 96.15 (Public domestic authorities) and § 96.16 (Effective date of accreditation and approval requirements) as §§ 96.16 and 96.17 respectively. Subpart C also contains § 96.12 (Authorized adoption service providers); § 96.13 (Circumstances in

which accreditation, approval, or supervision is not required); and § 96.14 (Providing adoption services using other providers).

The Department made a number of changes to this subpart in response to public comments, including changes to §§ 96.12, 96.13, 96.14 and 96.15. As discussed above in addressing § 96.4 comment 7, the Department has added a new § 96.12(c) to underscore that conferral and maintenance of accreditation, temporary accreditation, or approval is not tantamount to a guarantee that adoption services in specific cases are performed consistently with the Convention, the IAA, the regulations implementing the IAA, or any other applicable laws, but rather establishes only that the accrediting entity has concluded that the agency or person conducts adoption services in substantial compliance with the applicable standards set forth in this part. Section 96.13 has also been revised to clarify that, like § 96.12, it addresses services being provided in the United States in connection with a Convention adoption.

As discussed in section III, subsection A of the preamble, above, § 96.14 of the final rule differs from the proposed rule in its treatment of the responsibilities of a primary provider with respect to its use of other providers of adoption services in the United States and in Convention countries. The Department has revised § 96.14(b) and § 96.14(d) to require that, except as otherwise provided, in providing adoption services in the United States for a Convention case, a primary provider must treat other accredited agencies, temporarily accredited agencies, and approved persons as supervised providers under its responsibility and supervision. The response to comment 1 on § 96.14, below, discusses similar changes to § 96.14(c), the result of which is generally to require a primary provider to treat all non-governmental foreign providers as supervised providers, consistent with the standards in §§ 96.46(a) and (b), regardless of whether accredited by a Convention country, with a limited exception. The exception is provided for in § 96.14(c)(3), which allows a primary provider to use any foreign provider in a Convention country to obtain consents or perform a child background study in an incoming case, or to perform a home study in an outgoing case, so long as the primary provider verifies the provision of the service, in accordance with the standards set out in § 96.46(c).

Section 96.12—Authorized Adoption Service Providers

1. *Comment:* A commenter asks what will happen to intercountry adoption cases already in progress once the Convention enters into force.

Response: We have modified § 96.12(a) to make explicit reference to section 505(b) of the IAA and to clarify that cases in progress are not within the scope of this rule. Section 505 of the IAA establishes how entry into force of the Convention for the United States will affect cases in progress (so-called ''pipeline cases''). In general, adoption cases that are initiated, either in the United States or in a Convention country, before the entry into force of the Convention for the United States will not be treated as Convention cases subject to the IAA. If any further transition rules prove to be necessary, the Department will consider undertaking an additional rulemaking procedure.

2. *Comment:* Commenters ask if an agency or person will need to be accredited/approved if they handle adoptions from a country whose ratification or accession to the Convention has not been recognized by the United States. A commenter requests that the Department clarify when an agency or person will be required to be accredited or approved if they are handling intercountry adoption cases involving a country that is in the process of ratifying the Convention.

Response: Once the Convention has entered into force for the United States, an agency or person operating in the United States needs to be accredited, temporarily accredited, approved, or supervised or exempted only if it is performing adoption services in a Convention adoption. An adoption will not be considered a Convention adoption unless the Convention has entered into force between the United States and the other country involved. The Convention will not be in force between the United States and the other country if the other country has not yet ratified, approved, or acceded to the Convention, or if the United States does not recognize another country's accession to the Convention, as permitted by Article 44 of the Convention in certain circumstances.

With respect to the question of when agencies and persons handling intercountry adoptions will need to be accredited or approved to handle adoptions from countries whose subsequent ratification, approval, or accession the United States recognizes, we expect that this question will be largely governed by the other country's implementing proclamation. We note, however, that under Articles 14 and 41 of the Convention, we would expect the Convention to apply only to cases that arise after the Convention enters into force between the United States and the new Convention country, not to cases already in progress.

For a full list of countries that have already ratified or acceded to the Convention, please refer to the Web site of the Hague Conference on Private International Law at *http://www.hcch.net*. From the home page, click ''Welcome,'' click ''Conventions'' from the left hand menu, click Convention No. 33 in the list provided, and then click ''Status table'' from the right hand menu. (The direct Web address is *http://hcch.e-vision.nl/index_en.php?act=conventions.status&cid=69*) If an entry into force or ''EIF'' date appears in connection with a country, and the United States has not objected to the accession (which would be shown by clicking on ''A**'' in the Type column), then it is a Convention country. The Web site also lists the countries, like the United States, that have signed the treaty but for whom the treaty has not yet entered into force.

3. *Comment:* A commenter is concerned that mandatory accreditation will create a burden for agencies and persons. The commenter requests that subpart C permit voluntary accreditation. The commenter also recommends that the Department encourage agencies working in non-Convention countries to seek accreditation voluntarily.

Response: Consistent with the Convention, section 201 of the IAA creates a mandatory accreditation and approval system for Convention adoptions. On the other hand, the IAA does not give the Department authority to require accreditation or approval for non-Convention cases. Thus no changes are warranted in light of these comments.

Section 96.13—Circumstances in Which Accreditation, Approval, or Supervision Is Not Required

1. *Comment:* Several commenters believe that an exempted provider should be a social work professional or organization that is performing a home study but is not currently providing any other adoption service. They believe this would allow the exempt organization to become a supervised provider later, once a client selects a placing agency that will require post-placement services from the home study provider.

Response: The Department has changed the definition of exempted

provider, as noted in the response to comment 9 on § 96.2. The changes to the definition are meant to clarify that the event that triggers the accreditation/approval requirement is the provision of an adoption service other than a home study or child background study. Until an agency or person begins to provide such a non-exempt adoption service in addition to a home study report (or child background study), it is not required to be accredited or approved. (Note that the Department has modified the language of § 96.13(a) to remove a repetitive restatement of the definition of exempted provider found in § 96.2; this modification does not change the fact that a home study preparer or child background study preparer who is not currently and has not previously provided any other adoption service in the case is exempt from accreditation/approval.) If the exempted adoption service provider is simultaneously or subsequently asked to perform an additional adoption service in the case, however, the adoption service provider at that time would be required to become accredited, approved, or supervised before providing the additional adoption service in the United States. The examples numbered 3, 5, and 6 in § 96.15 illustrate the circumstances in which a home study provider is exempt and circumstances in which the provider would need to become accredited or approved or supervised. Example 4 in § 96.15 illustrates circumstances in which a child background study provider would be exempt.

2. *Comment:* One commenter suggests that exempted providers should be allowed to provide both home study services and post-placement services, because no agency can easily survive performing only home studies. Another commenter believes it is impractical to exempt only home study services and not post-placement services.

Response: The IAA specifically includes post-placement monitoring as an adoption service that requires an agency or person to be accredited, temporarily accredited, approved, or supervised.

Like post-adoption services and child welfare services, post-placement services other than post-placement monitoring are not adoption services, as discussed in the response to comment 4 on § 96.2. The change to the definition of exempted provider should clarify that providers of home studies and/or child background studies in the United States who have not performed any other adoption service in connection with a case are exempted providers until they provide a subsequent adoption service, such as post-placement monitoring. Thus a provider may offer any combination of ''exempt services'' (child background studies and home studies), child welfare services (such as post-adoption services), and other non-adoption services (such as legal services) in a case without being required to be accredited, temporarily accredited, approved, or supervised. This is further discussed in the response to comment 6, below, explaining changes to § 96.13(b) and (c). Please also see example 8 in § 96.15, regarding post-placement monitoring, for a concrete illustration.

3. *Comment:* Several commenters recommend that the home study or child background study prepared by an exempted provider be submitted to an accredited agency or temporarily accredited agency for review and re-approval. The commenters assert that clarifying that the report will be re-approved instead of approved denotes that the study was approved first by the home study agency as required by State and Federal regulations, and then was submitted to the accredited or temporarily accredited agency for re-approval.

Response: The Department is not making this change because we believe the rule, as written, addresses the commenter's concern. The requirement in § 96.13(a) of these regulations that a study prepared by an exempted provider must be ''approved'' refers to the new approval requirement mandated by section 201(b)(1) of the IAA. In order to get this section 201(b)(1) approval by an accredited agency or temporarily accredited agency, § 96.47(c) requires a determination that the home study was performed in accordance with 8 CFR 204.3(e) and applicable State law. Therefore, under these regulations, home studies must comply with any applicable State approval requirements, 8 CFR 204.3(e), and the IAA requirement that the home study be approved by an accredited or temporarily accredited agency.

4. *Comment:* Several commenters believe that the regulations should not exempt home study or child background study providers from the accreditation/approval process. One commenter requests that, at a minimum, home study and child background study providers be supervised providers. Some commenters support the exemption of home study and child background study providers from accreditation/approval.

Response: Section 201(b)(1) of the IAA clearly exempts the providers of home studies and child background studies in the United States from accreditation/approval requirements if such providers are not providing any other adoption service in the case.

There are other protections covering the completion of home studies and child background studies by exempted providers. The preparer of the home study or child background study must comply with other applicable Federal and State laws and regulations concerning the preparation of a home study or child background study. As an added measure of guidance and protection, the reports must be approved by an accredited agency or temporarily accredited agency who, under § 96.47(c), must determine that such laws have been complied with, and that all information required by these regulations has been included. These protections will help to ensure that the home studies and child background studies prepared by exempted providers comply with Convention requirements, the IAA, and these regulations.

5. *Comment:* A commenter asks whether U.S. social workers licensed in the United States who live abroad and perform home studies and post-adoption services for Americans overseas need to be accredited or approved. If we understand the comment correctly, such U.S. social workers often assist individual U.S. clients and U.S. child-placing agencies, but the laws of the country in which they are living may preclude their working as an employee of a U.S. agency. Thus, such a social worker cannot be an employee of an accredited agency or approved person under these regulations.

Response: A U.S. licensed social worker living abroad and providing post-adoption services and home studies will have to comply with the laws of the country of residence, which may preclude the social worker from being employed directly by an agency or person accredited or approved under these regulations. Such a social worker will not have to be independently accredited or approved under these regulations. In some circumstances, however, an accredited agency or approved person in the United States will be held responsible under these regulations for treating an independent overseas U.S. licensed social worker as a supervised provider, for example, if the social worker is asked to assist an accredited agency or approved person by performing home studies in cases involving immigration to the United States or by performing post-placement monitoring. If the independent overseas social worker is providing a home study

in an outgoing case, an accredited agency or approved person would also be able to use a home study prepared by the social worker if it verified the study pursuant to § 96.46(c).

6. *Comment:* A commenter recommends requiring that agencies or persons be accredited or approved if performing a home study/child background study and providing a child welfare service.

Response: The proposed rule caused some confusion as to the circumstances in which accreditation, temporary accreditation, supervision, or approval will be required. Confusion is difficult to avoid, in part, because section 201 of the IAA both includes home studies and child background studies in the definition of adoption services covered by the accreditation/approval/supervision requirement and provides that preparing these studies is a service exempt from accreditation/approval/supervision in certain circumstances.

The Department is changing § 96.13(b) to state the rule more clearly. As modified, § 96.13(b) states that, if an agency or person provides both a child welfare service and any of the adoption services listed in § 96.2 in the United States in a Convention case, it must be accredited, temporarily accredited, approved or supervised unless the only adoption service provided is preparation of a home study and/or a child background study. Thus, if the agency or person is an exempted provider and provides a child welfare service, the agency or person is still an exempted provider. It will remain exempted from accreditation/approval even if, in addition to providing child welfare services it also provides a home study, child background study, or both.

Otherwise the home study and child welfare services exemptions, explicitly required by the IAA, would have little force. On the other hand, if an agency or person provides an adoption service in the United States in addition to the child background study or home study, then that agency or person must be accredited, temporarily accredited, approved or supervised. For further clarification, the Department has added at § 96.15 examples illustrating circumstances when providers must be accredited, temporarily accredited, approved, or supervised, and examples of when they are exempt. Examples 2 and 5 of § 96.15 specifically address the child welfare services exemption.

To be consistent with § 96.13(b), the Department has also modified § 96.13(c) so that, if an agency or person provides both legal services and any adoption service defined in § 96.2 in the United States in a Convention adoption case, it must be accredited, temporarily accredited, approved or supervised unless the only adoption service provided is preparation of a home study and/or a child background study.

7. *Comment:* A commenter is concerned that facilitators, permitted to operate under some States' laws and not others, will be exempt from becoming accredited or approved. The commenter believes that this will provide unlicensed facilitators an unfair advantage by permitting them to provide services without adhering to State or Federal licensing laws.

Response: Any agency or person that provides one of the adoption services defined in § 96.2 in the United States must be accredited, temporarily accredited, approved, supervised, or an exempted provider under these regulations, regardless of whether or not the agency or person must be licensed or otherwise authorized in the State in which they operate. Furthermore, providers must still comply with any other applicable State and Federal laws.

8. *Comment:* A commenter is concerned that the regulations do not protect parents who try to adopt independently, without the aid of an agency or person. The commenter believes that such parents may be particularly susceptible to questionable adoption practices. Also, one commenter thinks that parents adopting independently should not be exempt from the regulations. Other commenters suggest that adoptive parents should not have to comply with the Convention, the IAA or other applicable laws when acting on their own behalf.

Response: Because section 201(b)(4) of the IAA explicitly exempts prospective adoptive parent(s) who are acting on their own behalf from any accreditation/approval requirements, § 96.13(d) is retained in the final rule. Notwithstanding this exemption, prospective adoptive parent(s) acting independently must comply with the Convention, other applicable provisions of the IAA, and other applicable laws. Moreover, as provided in § 96.13(d), parent(s) may act on their own behalf only if such action is allowed under applicable State law and the law of the concerned Convention country.

9. *Comment:* A commenter requests that the regulations emphasize that ''post-adoption services,'' including reminding the prospective adoptive parent(s) of their need to file post-adoption reports with the country of origin, are not ''adoption services.''

Response: The commenter is correct that post-adoption services—those services provided after a child's adoption—are not adoption services under the IAA. The preparation of post-adoption reports and efforts to encourage parents to file these reports are post-adoption services. Agencies or persons that solely perform such types of post-adoption services do not need to be accredited, temporarily accredited, approved, or supervised. The Department does not consider any change to the regulation to be necessary in response to this comment.

10. *Comment:* One commenter notes that several foreign governments require adoptive parent(s) to use an agency or person for post-adoption reporting. The commenter states that many agencies and persons currently take advantage of this requirement by overcharging adoptive parent(s) for these services. The commenter requests that the Department attempt to regulate this behavior.

Response: The preparation and filing of post-adoption reports are post-adoption services. The IAA does not cover such services, or provide a basis to regulate the fees charged for them. Nevertheless, § 96.40(b)(7) requires an accredited agency, temporarily accredited agency, or approved person to disclose in writing its expected fees and estimated expenses for any post-placement or post-adoption reports that the agency or person or parent(s) must prepare in light of any requirements of a child's expected country of origin. The Department believes that this requirement will help prospective adoptive parent(s) to make informed choices when choosing an agency or person and will promote fair and ethical fee arrangements.

11. *Comment:* One commenter requests that the Department draft a ''non-interference'' regulation that prohibits agencies and persons from interfering in an adoption when prospective adoptive parent(s) act on their own behalf.

Response: The Department does not believe that it is necessary at this time to include a non-interference provision, assuming that one germane to accreditation/approval could be crafted. If a prospective adoptive parent believes that an accredited agency or approved person is acting incompatibly with the IAA's exemption of prospective adoptive parent(s) acting on their own behalf from the accreditation/approval requirements, the complaint procedures of this rule will apply.

Section 96.14—Providing Adoption Services Using Other Providers

1. *Comment:* Several commenters are concerned about the relationship between a primary provider and entities accredited by Convention countries

(foreign accredited providers). Many want the regulations to reach as many types of providers who operate overseas as possible, while others stress that U.S. agencies and persons are not able to control or oversee the conduct of foreign providers. Some commenters want primary providers to be responsible for supervising the actions of every agency or person they use overseas, but others support the proposed rule, under which primary providers were not responsible for supervising foreign accredited providers.

Response: The issue of who a primary provider must treat as under its supervision and responsibility is clearly one on which reasonable people differ.

As explained at section III, subsection A of the preamble, above, the Department has modified §§ 96.14(c) and (d) to require that providers accredited by the Convention country, in addition to providers that are unregulated by the Convention country, be treated as foreign supervised providers, unless they are performing a service qualifying for verification under § 96.46(c). A primary provider will therefore need to exercise care in selecting foreign supervised providers, and will need to oversee their work; it may lose its status as an accredited agency or approved person if it fails to ensure that its use of foreign supervised providers meets the relevant standards in § 96.46.

This change in the regulations is consistent with the Department's view—made express in new § 96.12(c)—that accreditation is not a guarantee of good behavior. It also underscores the importance of U.S. agencies or persons working with ethical providers in other countries in order to ensure that all Convention adoptions comply with Convention standards. The final rule means that primary providers cannot ignore questionable practices simply because they are committed by a foreign provider that has been accredited. While the exception for services qualifying for verification acknowledges that U.S. agencies and persons may not be well positioned to supervise the providers of such services, the after-the-fact verification requirement will require the U.S. agency or person acting as the primary provider to take appropriate steps to ensure that the requirements of the Convention and local law have been met.

2. *Comment:* Some commenters state that primary providers should be fully responsible for all ''agents'' and individuals that assist them in the country of origin.

Response: Under the IAA and this rule, whether a primary provider must supervise an ''agent'' or other individual in a Convention country does not turn on what the provider is called. Section 96.14 requires that a primary provider adhere to the standards of § 96.46 when using any foreign non-governmental provider, and § 96.2 now makes clear that ''agents'' and other foreign entities are included in the definition of supervised provider. These modifications to the regulations are sufficient to address this comment.

3. *Comment:* One commenter notes a Connecticut case in which the court refused to award a State subsidy to an adoptive parent—presumably located in Connecticut—because the entity that ''placed'' the child was not licensed in Connecticut, and suggests that the Department address the interpretation of State statutes regarding the award of post-adoption subsidies through these regulations.

Response: The Department infers that the commenter believes that the Department could affect when State subsidies are available by including in the regulation a provision regarding, for example, whether a primary provider or a supervised provider will be considered to have ''placed'' a child for adoption, or where an adoption service provider will be deemed to be located, if multiple providers are involved in a Convention adoption. The Department does not agree that this issue can or should be addressed in these regulations.

4. *Comment:* A commenter requests that the Department change § 96.14(b)(2) because, as written, it appears that home studies performed by an exempted provider must be approved by any accredited agency, but not specifically by the primary provider. Other commenters suggest primary providers could be reluctant to accept home studies from exempted providers that they themselves did not approve.

Response: The Department is not making the change suggested because the Department believes that the regulation, as written, is consistent with the IAA, section 201(b)(1), which requires only that a home study prepared by an exempted provider be reviewed and approved by an accredited agency. We do not believe it is necessary to require further that the accredited or temporarily accredited agency approving the home study be the primary provider in the Convention case, and do not believe that this provision will deter primary providers from accepting home studies from exempted providers. While the primary provider must supervise and be responsible for the supervised providers with which it works, primary providers may need the flexibility to accept home studies prepared by exempted providers that have been approved by other accredited or temporarily accredited agencies (for example those located in other States) to complete Convention adoptions. Otherwise, primary providers could find it difficult to work with out-of-State prospective adoptive parent(s).

5. *Comment:* A commenter is concerned that small agencies will have trouble finding work as supervised providers because large accredited agencies will attempt to curb competition by performing all services in a case on their own, and recommends that, in lieu of having primary providers supervise other agencies, the Department step into the role of supervisor of the provision of adoption services by smaller agencies.

Response: It would be incompatible with the IAA's scheme for Convention implementation for the Department to take on a direct role in supervising the provision of adoption services, and we therefore decline to make any change in response to this comment. As well, we note that temporary accreditation, under section 203(c) of the IAA, is meant to address this commenter's concerns, by providing a mechanism to allow small agencies to continue to operate independently of larger agencies, while giving the small agencies a longer period of time to gather the information and resources necessary to achieve full accreditation. Moreover, while we cannot fully predict at this time the public demand for provision of adoption services in Convention cases, we believe that it is unlikely that accredited agencies or approved persons will have the resources to take over providing all of the adoption services that are currently handled by small agencies or persons. Also, when working with out-of-state clients, accredited agencies and approved persons will likely need supervised providers to provide adoption services in States where they are not licensed. Thus, the Department anticipates that small agencies and persons will continue to be able to provide services in Convention adoptions.

6. *Comment:* One commenter requests that the Department specifically outline what services require an agency or person to be accredited or approved.

Response: Only an agency or person providing adoption services, as defined in the IAA and in § 96.2, in a Convention adoption in the United States is required to be accredited or approved. An agency or person may avoid accreditation or approval if it provides Convention adoption services

solely as a supervised provider or exempted provider. Section 96.15 provides examples of circumstances in which an adoption service provider will be required to be accredited, temporarily accredited, or approved or to operate as a supervised provider or exempted provider.

Section 96.16—Public Domestic Authorities

Comment: The Department received a comment stating that it should require public domestic authorities providing adoption services to become accredited just like private entities, because it is ''hypocritical'' for the U.S. Government to have one set of rules for private agencies and a different set for public domestic authorities.

Response: While initial draft versions of the IAA did not exclude government agencies from the category of persons to be accredited or approved, (S. 682, 106th Cong. 1st Sess. (1999) and H.R. 2342, 106th Cong. 1st Sess. (1999)), sections 3(14) and 201(a) of the IAA as enacted, taken together, provide that persons to be accredited/approved shall not include an agency of government or tribal government entity, thereby excluding public domestic authorities from the accreditation and approval requirement. The Department understands this to exclude all State, local and tribal government entities—an approach that is consistent with the concerns of the Convention's drafters about abuses by private entities and that avoids placing the Federal government in the role of regulating State and local governments unnecessarily. (See the Notice of Proposed Rulemaking at 68 FR 54079 for further discussion of this issue.)

Section 96.17—Effective Date of Accreditation and Approval Requirements

Comment: A commenter asks what will happen to an agency that has not completed the accreditation process when the Convention enters into force.

Response: Once the Convention enters into force for the United States, any agency or person providing adoption services in connection with a Convention adoption in the United States will need to be accredited, temporarily accredited, approved, supervised, or be an exempted provider. The rule has a special timetable for the initial round of accreditation/approvals, which is discussed in the section-by-section responses for subpart D.

Subpart D—Application Procedures for Accreditation and Approval

Subpart D is organized in the same way as in the proposed rule, and includes § 96.18 (Scope); § 96.19 (Special provision for agencies and persons seeking to be accredited or approved as of the time the Convention enters into force for the United States); § 96.20 (First-time application procedures for accreditation and approval); § 96.21 (Choosing an accrediting entity); and § 96.22 (Reserved).

As discussed below, the Department has made no changes to this subpart in response to public comment. It has made minor technical and conforming changes, however.

Section 96.19—Special Provision for Agencies and Persons Seeking To Be Accredited or Approved at the Time the Convention Enters Into Force for the United States

Comment: Commenters support the transitional application deadline (TAD) and deadline for initial accreditation or approval (DIAA) process. Some request that the regulations more clearly outline the process for those who obtain accreditation after the Convention has entered into force. Another commenter suggests that any agency or person that has applied for full accreditation during the initial accreditation/approval timeframe, but that has not been processed by an accrediting entity through no fault of its own, should be granted temporary accreditation.

Response: We are not modifying the rule to allow temporary accreditation to be granted to an applicant for full accreditation that has not been accredited by the DIAA. The IAA specifically limits temporary accreditation to small agencies, as defined in section 203(c) of the IAA. The Department recognizes, however, that a large volume of applications may make it difficult for accrediting entities to complete accreditations and approvals in an expedited fashion. For this reason, § 96.19 establishes that a TAD will be published before the final DIAA. After the Department learns the number of agencies and persons that applied by the TAD, and has an estimate of how long it will take the accrediting entities to evaluate each applicant (including conducting necessary site visits), it will announce the DIAA. The DIAA will be the date by which an agency or person must complete the accreditation or approval process so as to be accredited or approved when the Convention enters into force for the United States. Since the DIAA will be set after the Department and the accrediting entities have a better idea of how long it will take the accrediting entities to do their job, all agencies and persons who applied by the TAD should have a reasonable opportunity to have their applications for accreditation or approval reviewed by the DIAA. The process for applying for accreditation/approval after the Convention has entered into force is already described in § 96.20.

Section 96.20—First-Time Application Procedures for Accreditation and Approval

Comment: A commenter believes that the regulations should specify the length of time an accrediting entity has to evaluate an applicant for accreditation or approval, and suggests 90 days.

Response: While the Department wants to ensure that applications for accreditation and approval are reviewed as quickly as possible, it is not establishing a deadline by which accrediting entities will have to complete their work. Variables like the number of agencies and persons that will apply, and the number and capacity of the accrediting entities, require that the time frame remain flexible. In addition, § 96.24(d) authorizes accrediting entities to give agencies and persons an opportunity to cure deficiencies before denying an application for accreditation or approval. If the Department imposed a 90-day limit on completion of accreditation and approval decisions, accrediting entities could be forced to deny applications in circumstances where an agency or person had not yet cured any identified deficiencies within 90 days. We believe agencies and persons will benefit from an accreditation and approval process that retains some flexibility.

Section 96.21—Choosing an Accrediting Entity

Comment: Some commenters recommend that applicants for accreditation and approval be allowed to apply to any designated accrediting entity, regardless of geographical location. Other commenters ask that the regulations clarify the accrediting entity to which an agency or person that is licensed in more than one State should apply for accreditation or approval.

Response: Section 96.21(a) states that an agency or person applying for accreditation or approval may apply to any accrediting entity with jurisdiction over its application. The criteria to determine the accrediting entities' jurisdiction will be set out in the

agreements between the Department and each accrediting entity. These agreements will be published in the **Federal Register**. The agreements between the Department and any accrediting entity that is a State licensing authority will have geographical limitations on its jurisdiction that are consistent with section 202(a)(2)(B)(ii) of the IAA, which states that public entities designated as accrediting entities will be permitted to accredit ''only agencies located in the State in which the public entity is located.''

Subpart E—Evaluation of Applicants for Accreditation and Approval

Subpart E is organized in the same way as in the proposed rule, and includes § 96.23 (Scope); § 96.24 (Procedures for evaluating applicants for accreditation or approval); § 96.25 (Access to information and documents requested by the accrediting entity); § 96.26 (Protection of information and documents by the accrediting agency); § 96.27 (Substantive criteria for evaluating applicants for accreditation or approval), and § 96.28 (Reserved).

The Department has made a number of changes in response to public comments, including to § 96.24, § 96.25, § 96.26, and § 96.27, which are discussed below.

Section 96.24—Procedures for Evaluating Applicants for Accreditation or Approval

1. *Comment:* Several commenters request that the Department address whether agencies that have undergone voluntary accreditation, as offered by the Council on Accreditation (COA), will have any ''deemed status.'' Similarly, several commenters request that, if an agency or person is already voluntarily accredited, then the accrediting entity recognize automatically compliance with certain subpart F standards that they believe are duplicative of the standards under which they were voluntarily accredited. Some voluntarily accredited small agencies contend that they cannot afford a second accreditation.

Response: The Department will not allow agencies or persons that have undergone a voluntary accreditation process to have ''deemed'' Convention accreditation or approval status. The Department acknowledges that some standards of subpart F overlap with the COA voluntary accreditation standards, however, there are many standards in subpart F that do not overlap. We do not believe that COA voluntary accreditation is a substitute for ensuring that all agencies meet the specific standards on intercountry adoption practices that are derived from the Convention and the IAA and set forth in subpart F. For example, § 96.33(b) requires an agency's or person's finances to be subject to independent audits every four years. COA standard G6.5.02 does not require any audit of an organization that annually reports revenues less than $500,000. Similarly, § 96.34(a) prohibits an agency or person from compensating any individual providing intercountry adoption services on a contingent fee basis, and § 96.34(b) prohibits an agency or person from compensating its directors, officers, employees or supervised providers on a contingent fee basis. COA standards have no explicit prohibition against contingent fees. The regulation in § 96.35(b) also contains requirements that are not in COA standards. The COA standards are focused on overall organizational integrity and ensuring best child welfare practices. The Department's standards are instead focused on implementing specific provisions of the IAA and ensuring that agencies and persons can perform Convention tasks. Finally, considerations of equity and timeliness counsel against allowing a COA voluntary accreditation to substitute, in whole or in part, for accreditation under these regulations—equity vis-á-vis agencies and persons who have not participated in COA's voluntary program and timeliness to the extent that accreditation under these regulations will be based on information to be collected in the future and closer to time to entry into force.

2. *Comment:* Several commenters ask that agencies and persons that have a State license become automatically accredited. Other commenters seek deeming of State licensing authorities' standards.

Response: The IAA does not authorize the Department to substitute licensure by a State for accreditation/approval under the Federal scheme created by the IAA. The Convention and the IAA mandate many specific duties for agencies and persons, including reporting duties, which are not part of current State licensing. In addition, because licensing requirements vary between States, allowing ''deeming'' would be at odds with the IAA's goal of uniform interpretation and implementation of the Convention, IAA section 2(a)(2), and might lead to disparities between agencies and persons, depending on their location. Thus, the fact that an agency or person is licensed or authorized by State licensing authorities is only one factor to consider in determining whether it can be accredited or approved.

3. *Comment:* A commenter notes that the nonprofit charitable organization she works with cannot place children with adoptive parents because it has just received State licensure as a child-placing agency, and the authorities in the foreign country in which it works require a child-placing agency to have been licensed at least four years before it is allowed to place children. The commenter expresses hope that the Department will be able to resolve the issue of differing standards in different countries in this rule, and welcome new agencies into the Convention system.

Response: The Department welcomes all agencies and persons, both new and old, to apply for accreditation or approval. The Department hopes that birth parents and prospective adoptive parent(s) will be able to select a provider from a broad and geographically diverse pool of accredited agencies and approved persons to help them with Convention adoptions. Article 12 of the Convention, however, states that an agency that is accredited in one Convention country may provide services in another Convention country only if it has been authorized to do so by the authorities of both countries. Thus, the United States cannot, in this rule, ensure that U.S. accredited agencies and approved persons will be entitled to work in all Convention countries. The Department expects, however, that because the standards for U.S. accreditation and approval will be stringent and comprehensive, Convention countries may be willing to accept U.S. accreditation or approval, without requiring further accreditation or approval.

4. *Comment:* One commenter notes that the proposed regulation would require evaluators to have experience in intercountry adoption or the evaluation of compliance with standards. While the commenter believes it would be preferable to require experience with both, because it expects that any entity designated as an accrediting entity would receive an initial flood of accreditation/approval applications, it requests that § 96.24(a) be revised to allow the use of a wider pool of evaluators who do not have intercountry adoption experience in order to complete accreditation/approval on a timely basis. Another commenter would like the regulation to specify that at least one evaluator participating in site visits must have experience with intercountry adoption.

Response: The Department has expanded the qualifications for

evaluators in § 96.24(a). Those qualifications now include: (1) Expertise in intercountry adoption; (2) expertise in standards evaluation; or (3) experience with the management or oversight of a child welfare organization. The Department believes that permitting evaluators to meet any of these three qualifications will ensure that accrediting entities perform high-quality evaluations of agencies and persons, while leaving them flexibility to find enough qualified site evaluators. To preserve flexibility, we are not mandating that the visiting site evaluator be the one with the intercountry adoption experience.

5. *Comment:* Some commenters are concerned that the accrediting entities will not consider complaints when evaluating agencies and persons.

Response: We have added a provision to § 96.24(b) to require that accrediting entities consider complaints referred to them under subpart J of this rule when reviewing an agency's or person's accreditation or approval status.

6. *Comment:* A commenter asks whether an agency seeking accreditation must cover the cost of any off-site interviews with individuals (e.g., clients who have moved to a different city from the agency).

Response: Pursuant to § 96.8(b)(2), agencies and persons will pay a nonrefundable fee for full accreditation or approval that is set to include ''the costs of all activities associated with the accreditation or approval cycle, including but not limited to, costs for completing the accreditation or approval process * * * except that separate fees based on actual costs incurred may be charged for the travel and maintenance of evaluators.'' Thus, an agency or person can be expected to cover the cost of doing any off-site interviews, whether the cost is incorporated fully into the accreditation or approval fee or recovered in part through fees for travel costs incurred by evaluators to do off-site interviews.

The fee arrangement is different for those agencies seeking temporary accreditation, but the net result is the same with respect to off-site interviews. The accrediting entity will charge a non-refundable fee for temporary accreditation that will not include the costs of site visits, whether on-or off-site, because a site visit is not mandatory to receive temporary accreditation. If the accrediting entity decides a site visit is necessary to determine whether to approve an application for temporary accreditation, the accrediting entity will assess additional fees to the agency for the costs of a site visit, including any costs for off-site interviews.

7. *Comment:* A commenter requests the following revision to § 96.24(d) to make notice of deficiencies to a candidate for accreditation or approval mandatory: ''Before deciding whether to accredit an agency or approve a person, the accrediting entity shall advise the agency or person of any deficiencies that may hinder or prevent its accreditation or approval and defer a decision to allow the agency or person to correct the deficiencies.''

Response: The Department has not changed the language of the proposed rule. Section 96.24(d) already permits an accrediting entity discretion to give an agency or person advance notice of and an opportunity to cure any deficiencies that may hinder or prevent its accreditation or approval. The accrediting entities are being chosen based on their expertise and experience with accreditation and/or licensing of adoption service providers, and the rule defers to that expertise by giving them discretion to judge whether it would be constructive to give notice and an opportunity to cure deficiencies before any specific denial.

8. *Comment:* One commenter notes that § 96.24(c) provides for persons with knowledge of an agency's or person's work to comment on an application for accreditation or approval, but that the Department has not provided a mechanism for making such comments. The commenter states that knowledgeable individuals have no way of knowing whether an agency or person has filed for accreditation or approval.

Response: This issue is not addressed fully in the regulation, but will be further addressed in the agreements with the accrediting entities. Pursuant to § 96.91(b)(1), once the Convention has entered into force, individuals who wish to comment on an agency's or person's application for accreditation or approval may ask an accrediting entity to confirm whether that agency or person has a pending application for accreditation or approval. The Department intends, in its agreements with the accrediting entities, to require that the accrediting entities also make available to the public information related to agencies and persons that apply to be accredited or approved by the date of entry into force. We also intend to address in the agreements with the accrediting entities the mechanism by which the public can communicate to the accrediting entity comments on initial applications for accreditation or approval. The agreements will be published in the **Federal Register.**

Section 96.25—Access to Information and Documents Requested by the Accrediting Entity

1. *Comment:* Several commenters ask the Department to clarify whether accrediting entities are allowed access to information and documents belonging to an agency or person regarding non-Convention cases. These commenters request that the Department specifically limit the accrediting entity's access to information and documents to Convention adoption cases only.

Response: The Department has modified this section to clarify that, with the exception of first-time applicants for accreditation or approval, agencies and persons are only required to give accrediting entities access to adoption case files related to Convention adoptions. Thus, if an agency seeking renewal of accreditation provides adoption services relating to both children from a Convention country and children from a non-Convention country, the agency or person would have to give the accrediting entity access to any adoption case files relating to intercountry adoptions with the Convention country, but not to the files relating solely to its intercountry adoptions from the non-Convention country. The exception to this rule, which now appears at § 96.25(b), is that the accrediting entity may review case files of non-Convention adoption cases for the purpose of assessing a first-time applicant's capacity to comply with the record-keeping and data-management standards in subpart F. We make this exception so that accrediting entities have the option of reviewing adoption case files of a first-time applicant if they are concerned about the applicant's record-keeping capabilities, since the applicant will not have any Convention case files to be reviewed. Section 96.25(b) makes it clear that, if such review is requested by an accrediting entity, the agency or person may withhold names and other information that identifies birth parent(s), prospective adoptive parent(s), and adoptee(s) from such non-Convention adoption case files to protect the privacy of those individuals.

The general rule prohibiting review of non-Convention adoption case files does not apply with respect to documents and information, such as policy guidelines, that relate to both Convention and non-Convention adoptions. The accrediting entity must be given access to such documents and information. For example, accrediting entities will be allowed to look at documents relating to an agency's or

person's finances and corporate governance, which relate to both Convention and non-Convention adoption activities.

2. *Comment:* A commenter suggests that the Department amend § 96.25(a) so that it reads: ''The agency or person must give the accrediting entity access to all information and documents * * * that it requests [instead of ''requires''] to evaluate an agency or person,'' in order to remove any argument that the accrediting entity would be required to justify why access to certain documents or information was necessary to the accreditation process.

Response: The Department has modified § 96.25(a) so that it states that an agency or person must give the accrediting entity access to information and documents ''that it requires or requests'' to evaluate an agency or person for accreditation or approval. This should make it clear (subject to the general rule prohibiting review of non-Convention adoption case files) both that the agency or person must give the accrediting entity the information and documents it needs, even if not requested by the accrediting entity, and that the agency or person must give the accrediting entity what the accrediting entity requests, without challenging whether the accrediting entity needs the information and documents.

Section 96.26—Protection of Information and Documents by the Accrediting Entity

1. *Comment:* Several commenters request that all documents used by an accrediting entity in the accreditation process be made available to the public, subject only to existing Federal, State, and local laws. They suggest that the documents could help prospective adoptive families choose which agency or person to use for adoption services. Commenters also request that an agency's or person's list of supervised providers (particularly foreign supervised providers) be public information. These commenters want § 96.26(a), which sets limits on disclosure of information procured by the accrediting entity, to be deleted. Other commenters recommend that the Department maintain § 96.26(a) as it is written. They believe that confidentiality is essential to facilitating an open relationship between accrediting entities and agencies and persons seeking accreditation/approval. Some commenters think subpart M appropriately specifies the types of information that should be provided to the public. One State licensing authority requests that the Department elaborate on the interplay between the Freedom of Information Act (FOIA), 5 U.S.C. 552 and § 96.26, because it believes § 96.26 conflicts with the FOIA.

Response: We have made a few changes to § 96.26(a). Section 96.26(a) continues to require accrediting entities to protect from unauthorized use and disclosure all documents and information the accrediting entity may collect while doing its job of evaluating an agency or person, such as self studies, internal policies, corporate financial data, and background information on individual employees. We are not deleting the basic rule of confidentiality, because we believe it is appropriate when agencies and persons are being asked to disclose internal business information.

In order to clarify in what circumstances information may be disclosed, and to reinforce that the confidentiality rule does not prohibit disclosures otherwise required under State or Federal law, we have moved and revised language from § 96.26(a) to a new § 96.26(b). Section § 96.26(b) now contains the general prohibition on disclosure of such documents and information to the public, and sets out the circumstances in which it is appropriate to release information. In particular, § 96.26(b)(2) now includes new language making it clear that the accrediting entity may not withhold information, including an agency's or person's internal documents, if otherwise required to release it under State or Federal law. We note that § 96.26 of the final rule cannot conflict with the FOIA or similar State laws because the prohibitions against disclosure in § 96.26(b)(2) do not apply if disclosure is otherwise required under Federal or State laws. Thus, if the FOIA or other information disclosure laws apply, accrediting entities must comply with those laws.

2. *Comment:* A commenter requests that the Department delete the first sentence of § 96.26(b) (now § 96.26(c)), which allows agencies and persons to provide documents in which individually assigned codes have been substituted for personal identifying information, because it believes monitoring the actual practices of an agency or person requires a comprehensive list identifying all clients, including prospective adoptive parent(s) and birth parent(s), and because it believes the provision is unnecessary because the remainder of the provision already imposes a duty of confidentiality on the accrediting entity.

Response: The Department has to balance the need of accrediting entities to obtain information on the practices of accredited agencies and approved persons against the need to protect the privacy of individual participants in the adoption process. The Department believes that this provision, now § 96.26(c), strikes the right balance between these competing interests by giving accrediting entities the authority to request information that identifies birth parents, prospective adoptive parent(s), and adoptees if they have an articulated need for that information, but not requiring the automatic disclosure of all such information, and thus it has made no changes in response to this comment.

Section 96.27—Substantive Criteria for Evaluating Applicants for Accreditation or Approval

1. *Comment:* Several commenters suggest that using a point system for evaluating compliance with standards will be too subjective. Many also believe that a substantial compliance system is too vaguely defined in the regulations. Some request that the regulations specify how different standards will be weighted. Other commenters commend the Department for allowing accrediting entities to develop a substantial compliance system and express support for the rule as written. Some commenters request that the Department submit any substantial compliance procedures to notice and comment rulemaking. Other commenters recommend that any system prevent an agency or person from achieving accreditation or approval if it does not meet all minimum requirements in section 203(b)(1)(A)–(F) of the IAA.

Response: The Department did not think it was advisable to include a methodology for measuring substantial compliance in the rule, and continues to be of that view. The accrediting entities, who will be using the methodology and who will have more experience than the Department in administering standards, should take the lead in preparing the procedures for measuring substantial compliance.

We have, however, revised § 96.27(d) to clarify that the Department will retain oversight over the development and use of substantial compliance procedures by the accrediting entity, ensuring that each accrediting entity only uses a method approved by the Department, and that each method is substantially the same as all other approved methods. In accordance with the rule, once an accrediting entity is selected, the entity must develop a method of evaluating compliance. Each such method will include: an assigned value for each standard or element of a standard; a method of rating compliance with each standard; and a method of evaluating an

agency's or person's overall compliance with all of the applicable standards. The Department must then approve each accrediting entity's method for ascertaining substantial compliance, ensuring that the value assigned to each standard reflects the Convention and the IAA and is consistent with the value assigned to the standard by other accrediting entities. The weighting of particular standards will be based on the priorities set in the Convention and the IAA (including the core standards in IAA section 203(b)(1)(A)–(F)).

The Department does not agree that substantial compliance procedures, when developed, must or should be subject to Administrative Procedure Act rulemaking procedures. The final rule, like the proposed rule, instead requires that accrediting entities advise applicants of the value assigned to the standards or elements of the standards at the time they provide applicants with the application materials. This notice and the Department's oversight of the development of the procedures for measuring substantial compliance will ensure that agencies and persons are informed about the procedures before seeking accreditation or approval, and that the procedures reflect the objectives of the Convention and the IAA.

2. *Comment:* Several commenters do not agree with the use of a substantial compliance system. They request that the regulations require complete compliance with all the standards of subpart F. Many other commenters express their support for a substantial compliance model. Some are concerned that the accrediting entities will require compliance with standards not contained in subpart F.

Response: There has been considerable disagreement in the adoption community about which of the standards in subpart F—if any—should be made absolute. The preamble to the proposed rule discussed this issue extensively. (See 68 FR 54080). The IAA plainly contemplates a substantial compliance standard, however, as section 204(b)(1) of the IAA requires the Department to suspend or cancel the accreditation or approval of an agency or person who is ''substantially out of compliance with applicable requirements,'' if the accrediting entity has not taken appropriate enforcement action. In addition, the standards in Part F address a wide range of ethical and social work and adoption issues and reflect practices that inherently are evolving. One-time failures to comply with a particular standard, though unfortunate, should not necessarily lead to the imposition of severe types of adverse action such as cancellation of accreditation or approval. The Department considers it essential to give sufficient discretion to accrediting entities, which will be selected based on their expertise, to decide when noncompliance warrants adverse action, and which kind of adverse action to take.

The Department recognizes that adherence to certain individual standards is critical to protecting children and families and comporting with the requirements of the Convention and the IAA. Therefore, as noted in the response to comment 1 for this section, the accrediting entity is required to develop and use a method for measuring substantial compliance which includes assigning values and weighting each individual standard, or element of a standard, reflecting the relative importance of each standard to compliance with the Convention and IAA. The accrediting entity may not use standards other than those contained in this rule.

3. *Comment:* Several commenters believe that the accreditation process described in § 96.27 focuses too heavily on document review. They would like the regulations to emphasize analysis of an agency's or person's past performance, including successful adoptions, disruptions and dissolutions, complaints, and pending or resolved lawsuits, as the primary criteria for accreditation. Some commenters suggest that the primary basis of evaluation for accreditation should be interviews of clients chosen on a random basis, as well as interviews with former employees, agents, and consultants. One commenter suggests that a provider should be required to waive any confidentiality requirements contained in settlements of lawsuits. Some commenters would like agencies to give accrediting entities a list of all their clients and former clients to aid in the evaluation.

Response: We believe the overall process outlined in the rule for evaluating agencies and persons and determining substantial compliance is consistent with the IAA's accreditation model. It is worth noting that accrediting entities will not initially be able to monitor actual performance of agencies in completing Convention adoptions because the Convention will not enter into force for the United States until after some agencies and persons have been accredited and approved. Therefore, during the initial accreditation process a certain amount of document review is necessary to measure an agency's or person's capacity to meet the standards once the Convention is in force. The rule takes this into account in § 96.27(b). The rule also requires, however, in § 96.24(b) that accrediting entities conduct site visits for each agency or person seeking accreditation or approval. As provided in § 96.24(c), these site visits may include ''interviews with birth parents, adoptive parent(s), prospective adoptive parent(s), and adult adoptee(s) served by the agency or person, and interviews with other individuals knowledgeable about the agency's or person's provision of adoption services.'' Thus, we do not agree that the evaluation process focuses too much on document review.

In addition, § 96.24(b) has been revised to require consideration of complaints received under subpart J; § 96.27(b) requires that past performance generally be considered in determining if an agency or person may retain or renew its accreditation or approval to complete Convention adoptions; and other standards in subpart F, in particular § 96.35, require the disclosure to the accrediting entity of much of the information these commenters wish to have the accrediting entity consider. Please see the discussion of comments on § 96.35's disclosure provisions, including disclosures related to lawsuits, complaints, and disciplinary proceedings for further explanation.

4. *Comment:* A State licensing authority commends the Department for explaining, in § 96.27(g), that the accreditation standards under these regulations do not eliminate the need for an agency or person to comply fully with the laws of the State in which it operates. The commenter suggests two modifications to enhance a close working relationship between accrediting entities and State licensing authorities that are not accrediting entities. First, it recommends that the Department require the accrediting entities to consult with State licensing authorities to verify that applicants for accreditation or renewal of accreditation are in compliance with State licensing requirements. Secondly, it recommends that the Department specifically allow accrediting entities and State licensing authorities to share information with each other pursuant to the access to information provisions of § 96.26.

Response: The Department encourages open communication between accrediting entities and State licensing authorities and has revised the language of § 96.26(b) to clarify that sharing information with an appropriate public domestic authority, such as a State licensing authority, is authorized.

Subpart F—Standards for Convention Accreditation and Approval

Subpart F is organized in the same way as in the proposed rule with informal ''divisions'' after the first section, § 96.29 (Scope). The Licensing and Corporate Governance division includes § 96.30 (State licensing); § 96.31 (Corporate structure); and § 96.32 (Internal structure and oversight). The Financial and Risk Management division includes § 96.33 (Budget, audit, insurance, and risk assessment requirements) and § 96.34 (Compensation). The Ethical Practices and Responsibilities division includes § 96.35 (Suitability of agencies and persons to provide adoption services consistent with the Convention) and § 96.36 (Prohibition on child buying). The Professional Qualifications and Training for Employees division includes § 96.37 (Education and experience requirements for social service personnel) and § 96.38 (Training requirements for social service personnel). The Information Disclosure, Fee Practices and Quality Control Policies and Practices division includes § 96.39 (Information disclosure and quality control practices) and § 96.40 (Fee policies and procedures). The division on Responding to Complaints and Records and Reports Management includes § 96.41 (Procedures for responding to complaints and improving service delivery); § 96.42 (Retention, preservation and disclosure of adoption records); and § 96.43 (Case tracking, data management, and reporting). The Service Planning and Delivery division includes § 96.44 (Acting as a primary provider); § 96.45 (Using supervised providers in the United States); and § 96.46 (Using providers in Convention countries). The division on Standards for Cases in Which a Child Is Immigrating to the United States (Incoming Cases) includes § 96.47 (Preparation of home studies in incoming cases); § 96.48 (Preparation and training of prospective adoptive parent(s) in incoming cases); § 96.49 (Provision of medical and social information in incoming cases); § 96.50 (Placement and post-placement monitoring until final adoption in incoming cases); § 96.51 (Post-adoption services in incoming cases); and § 96.52 (Performance of Hague Convention communication and coordination functions in incoming cases). The division on Standards for Cases in Which a Child Is Emigrating From the United States (Outgoing Cases) includes § 96.53 (Background studies on the child and consents in outgoing cases); § 96.54 (Placement standards in outgoing cases); § 96.55 (Performance of Hague Convention communication and coordination functions in outgoing cases); and § 96.56 (Reserved).

The Department has made a number of changes to subpart F in response to public comments. In particular, as discussed at section III, subsection B of the preamble, revisions have been made to § 96.33's insurance standard, to § 96.37 on social service personnel education and experience, to § 96.39's provision on waivers of liability, and to the provisions relating to primary provider responsibility for supervised providers in the United States and for foreign providers in Convention countries §§ 96.45–46. Comments on these provisions, and changes to a number of others, such as §§ 96.32, 96.34, 96.35, 96.38–44, and 96.47–54, are discussed below. We also changed the sections on preparation of home studies in incoming cases (§ 96.47) and child background studies in outgoing cases (§ 96.53) to clarify that, under the IAA, a supervised provider may prepare a home study or child background study.

Licensing and Corporate Governance

Section 96.30—State Licensing

1. *Comment:* Several commenters recommend revising § 96.30(c) to state that agencies or persons work ''in cooperation with'' instead of ''through'' other agencies and persons licensed in different States. They believe this will clarify the fact that agencies are not limited to working only with families in the State(s) in which the agency is licensed. Conversely, a commenter requests that the regulations state that, once an agency is accredited to provide Convention adoption services, it is authorized to provide those services in any U.S. State where it is also licensed under State law. Another commenter believes that a different license should be involved in intercountry placements and that being licensed to place children domestically is not sufficient for placing internationally.

Response: We are not making any changes in response to these comments. The Department recognizes that intercountry adoptions in the United States frequently bring together an agency licensed in one State and a family located in a different State. The Convention and the IAA do not change any applicable State requirements that an agency be licensed or otherwise authorized in the State to provide services in the State. Under the IAA and § 96.30(c), to provide adoption services in a Convention case, an agency or person must be: (1) Licensed or otherwise authorized in each State in which it is providing adoption services; or (2) if it wishes to work in a State in which it is not licensed, work through an agency or person who is licensed or authorized and who is acting as an exempted or supervised provider, or through a public domestic authority of that State. Thus, an agency not licensed in a particular State may provide services to a client in that State, through another agency or person that is licensed or authorized to provide services in that State and additionally is functioning as a supervised provider or an exempted provider or through a public domestic authority.

These regulations are consistent with the IAA, which states explicitly, in section 503(a), that the IAA is not meant to preempt State law unless a provision of State law is inconsistent with the Convention or the IAA.

It will continue to be up to each State to determine if requirements to be licensed to provide adoption services in intercountry cases should be different from requirements to provide services in domestic adoption cases. Regardless of how an individual State resolves this issue, however, an agency or person involved in intercountry adoption services under the Convention will need to comply with these regulations.

2. *Comment:* Two commenters believe that it is essential that agencies and persons be permitted to work with other agencies and persons licensed in different States. They ask that accrediting entities pay close attention to the activity under such relationships, however, so that § 96.30 is followed properly.

Response: In deference to the important role that cross-State relationships and networks play in matching children from many different countries of origin with prospective adoptive parent(s) throughout the United States, the regulations allow such relationships to continue. We believe that the regulations also allow appropriate oversight of these relationships, so that no change is needed in response to this comment. The regulations, in particular subpart C, provide for a ''primary provider'' to be responsible for ensuring that all of the adoption services, as defined in § 96.2, are provided in a Convention case. The primary provider assumes responsibility for its use of supervised providers under the provisions of §§ 96.45 and 96.46, which includes ensuring that those providers are in compliance with applicable State licensing and regulatory requirements in all jurisdictions in which they provide adoption services. Failure to do so may

be grounds for the accrediting entity to take adverse action against the primary provider, and may jeopardize the primary provider's accreditation or approval status. The Department believes that this system will ensure proper monitoring of supervised providers by primary providers.

Section 96.31—Corporate Structure

1. *Comment:* Several commenters oppose allowing agencies that qualify for nonprofit tax status under State law alone from receiving accreditation. They suggest that only agencies that have qualified for nonprofit tax status under § 501(c)(3) of the Internal Revenue Code should be permitted to become an accredited agency. One commenter requests that the Department bear in mind that several countries already have regulations that would explicitly require U.S. agencies to have nonprofit status and/or tax-exempt status under § 501(c)(3) of the U.S. Tax Code.

Response: We left § 96.31(a) of the proposed rule unchanged in the final rule. For accreditation purposes, agencies must have nonprofit status under the laws of any State or must qualify for nonprofit tax treatment under § 501(c)(3) of the Internal Revenue Code. The Department does not believe there is sufficient justification to increase the regulatory burden of the rule by requiring all agencies to obtain nonprofit status under § 501(c)(3) and under State law. Nothing in this rule prohibits agencies from qualifying as a nonprofit under both Federal and State law, if they so choose, and an agency or person will of course have to obtain § 501(c)(3) status if so required by a particular Convention country in which the agency or person wishes to operate.

2. *Comment:* A commenter recommends that attorneys and other individual practitioners be required to be licensed to provide adoption services under State law, rather than only authorized to provide adoption services, in order to become approved persons.

Response: The Department declines to change the rule. IAA section 203(b)(1)(G) requires only that nonprofit agencies must be licensed to provide adoption services in at least one State in order to become accredited. Section 203(b)(2) of the IAA does not apply the requirement to have a State license to persons (for-profit agencies and individuals) that seek to become approved. We note that § 96.30(a) requires that persons be authorized by State law to provide adoption services in at least one State, which may have the practical effect of requiring persons to become licensed, depending on the laws of the State in question.

Section 96.32—Internal Structure and Oversight

1. *Comment:* Numerous commenters request that agencies and persons be required to include adult adoptees on their boards of directors or other similar governing bodies to provide input on the needs and concerns of the intercountry adoption community.

Response: The Department agrees that the standard should encourage accredited agencies and approved persons to have boards of directors that include individuals who understand the concerns of adoptees and other individuals involved in adoptions. Therefore, the Department has amended § 96.32(b) to add a standard that agencies and persons have a board of directors or a similar governing body that, among other things, includes one or more individuals with experience in adoption, including, but not limited to, adoptees, birth parents, prospective adoptive parent(s), and adoptive parents. Articles 11 and 22 of the Convention expressly recognize the importance of having agencies and persons directed and staffed by persons qualified by their ethical standards and by training or experience. We believe that adding this flexible standard is consistent with these articles, and that there is no reason to limit the standard to adoptees.

2. *Comment:* A few commenters emphasize that approved persons should have the same education, adoption service experience, and management credentials that the regulations require of the chief executive officer (CEO) of an agency.

Response: Individual approved persons will need to oversee any supervised providers and ensure effective use of resources and coordinated delivery of services. The Department therefore agrees that it is important that they have education, adoption service experience, and management expertise similar to that which we expect of the CEO of an agency. Therefore, the Department has changed § 96.32(a) to apply to situations where the person is an individual.

3. *Comment:* Several commenters suggest that a new standard be added to § 96.32, which would read, ''The agency or person has in place appropriate procedures and standards, pursuant to §§ 96.45 and 96.46, for due diligence on selection, monitoring, and oversight of supervised providers.'' Others are concerned that accrediting entities have sufficient information to check on an agency's or person's past practices.

Response: The Department agrees that one of the critical functions that accredited agencies and approved persons will serve is to provide oversight to the supervised providers with whom they work. Therefore, in response to these comments, the Department has added a new standard to the final rule, as § 96.32(d), which reads: ''The agency or person has in place procedures and standards, pursuant to §§ 96.45 and 96.46, for the selection, monitoring, and oversight of supervised providers.''

We have also added a new standard as § 96.32(e). Section 96.32(e) requires the agency or person to disclose to the accrediting entity any other names by which the agency or person is or has been known, under its current or any former form of organization, and addresses, and phone numbers used when such names were used. It also requires the agency or person to disclose the name, address, and phone number of current directors, managers, and employees, and, if any such individual previously served with another provider of adoption services, the name, address, and phone number of the provider of which they were a director, manager, or employee. Additionally, the rule now requires that the agency or person must provide information on any entity that it currently uses or intends to use as a supervised provider. These modifications to § 96.32(e) will help to ensure that an accrediting entity may investigate an agency's or person's past and present practices, the past and present practices of their directors, managers, and employees, and their selection and oversight of supervised providers.

Financial and Risk Management

Section 96.33—Budget, Audit, Insurance, and Risk Assessment Requirements

1. *Comment:* Commenters request clarification of the budget and audit requirements. Some commenters state that annual independent audits are too expensive and burdensome.

Response: In response to these comments, the Department has revised § 96.33(a) and § 96.33(b). Subsection (a) requires that the agency or person operates under a budget that discloses all remuneration, regardless of its form, paid to the agency's or person's board of directors, managers, employees, and supervised providers. Agencies and persons should find subsection (b) less burdensome than the proposed rule, in that it now requires annual internal budget review and oversight and independent audits only every four

years. The yearly internal financial review reports must be submitted for inspection by the accrediting entity. We believe these provisions strike a balance between ensuring financial soundness and transparency and reducing the costs of annual external audits.

2. *Comment:* Numerous commenters request that the phrase ''independent professional assessment of risks'' in § 96.33(g), on insurance coverage, be more clearly defined. Commenters believe that an agency's or person's management, insurance agent, financial, or legal counsel should be allowed to conduct a risk assessment review. Several commenters are concerned that requiring a review by an independent risk assessment firm will cause undue financial hardship for small agencies and will raise the costs of accreditation and approval. As well, a commenter believes that agencies or persons should not be required to include in a risk assessment an evaluation of the risks of using supervised providers in the United States and abroad. Other commenters believe that an agency or person should be allowed to determine its own level of risk and purchase the amount of insurance that it believes is necessary.

Response: The Department has changed the risk assessment standards in response to concerns that the proposed rule was too burdensome. The final rule standard provides for the agency or person to conduct a risk assessment, but no longer provides that the assessment be conducted by an independent professional. An agency's or person's management, insurance agent, financial, or legal counsel may conduct the assessment. Additionally, the assessment must include a review of information on the availability of insurance coverage for Convention-related activities. The agency or person must use the assessment to meet the requirements of § 96.33(h), which requires an agency or person to maintain professional liability insurance in amounts reasonably related to its exposure to risk, and to evaluate what other types of insurance to carry. To conform to changes in §§ 96.45 and 96.46 (removing requirements for assumption of liability for supervised providers) and § 96.39(d) (allowing use of waivers), we have deleted the requirement that the risk assessment include an evaluation of the risks of providing services directly to clients who do not sign blanket waivers of liability and the risks of working with supervised providers. The individual conducting the risk assessment will now have discretion to determine the elements to complete the risk assessment, including any risks arising from working with supervised providers or requiring clients to sign limited and specific waivers.

The Department recognizes that requiring risk assessments is a change from the current practice of many adoption service providers. The Department is requiring a risk assessment so that the agency or person can use it to determine the appropriate amount of insurance coverage needed to protect families working with accredited agencies and approved persons as well as for the protection of the agencies and persons themselves.

3. *Comment:* Several commenters support the standard on professional liability insurance coverage, but are extremely concerned about the lack of available insurance. Commenters state that insurance coverage options are limited, and coverage can be unaffordable for many agencies or persons. Commenters request that the Department explore alternative means for agencies and persons to obtain insurance coverage. Commenters requested that the Department consider the following suggestions: (1) Agencies and persons self-insuring through the use of a bond account held by a public authority; (2) agencies and persons self-insuring through the purchase of a Certificate of Deposit in the name of the agency and a public authority; (3) establishment by the Department of a federally backed insurance program; (4) establishment of a Federal insurance commission; (5) a Hague insurance commission established to offer insurance coverage at a reasonable rate; and/or (6) an insurance waiver program for agencies and persons who show that they are unable to secure insurance coverage despite attempts to do so.

Response: The IAA requires a standard on insurance coverage. The Department understands the concern of many commenters about the availability and affordability of professional liability insurance coverage for adoption service providers, but anticipates that such coverage will become available and affordable as the market responds to the demand the standard will create. These suggestions for developing alternatives to insurance coverage by existing market mechanisms in any event far exceed the authority granted to the Department by the IAA.

4. *Comment:* Several commenters suggest that the Department request that the insurance industry analyze underwriting intercountry adoption insurance policies to parents to increase the likelihood that insurers may be more willing to provide an agency or person insurance coverage as well. Commenters suggest that the regulations allow prospective adoptive families and agencies and persons to enter into binding arbitration with capped awards in order to limit litigation and thereby encourage insurers to underwrite liability insurance for agencies and persons.

Response: The IAA does not give the Department the authority to regulate the insurance industry. Nor does the Department believe it can or should require parents to enter into binding arbitration agreements with agencies or persons. Nothing in the IAA or these regulations would prevent prospective adoptive parent(s) and agencies or persons from agreeing to use binding arbitration as opposed to litigation in the event of a problem, however. Thus it is possible that practices will develop that will respond to some of these suggestions.

5. *Comment:* A commenter recommends that the regulations provide that, if a company provides insurance policies to any nonprofit organizations, it must provide insurance to adoption placement agencies. This commenter perceives that insurance companies discriminate against adoption placement agencies. A commenter requests that insurers be required to consider the differences in the services offered by agencies before determining coverage, such as whether the agencies place orphans or whether they place children whose birth parents consent to an adoption. The commenter also suggests that there should be federally-mandated guidelines to govern fee increases by insurance companies.

Response: As noted, the IAA does not give the Department authority to regulate the insurance industry, including the types of coverage insurance companies must provide or the fees charged for insurance.

6. *Comment:* Many commenters believe that the requirement in § 96.33(g) to maintain a minimum of $1,000,000 per occurrence in insurance is excessive and suggest a lower amount or that an amount not be specified in this rule. Commenters are concerned in particular that the insurance requirements will increase the costs of adoption. Many commenters point out that professional liability insurance is very difficult to obtain; some say that insurance companies commonly refuse coverage to adoption service providers, particularly if the provider has ever been party to a lawsuit, and others state that their coverage was cancelled after just one insurance claim. Those that do have coverage find their insurance premiums to be expensive. Another commenter, however, maintains that

liability insurance coverage is readily available to qualified agencies and persons. Some commenters also agree with the $1,000,000 per occurrence liability insurance requirement and believe the requirement is essential for the protection of adoptive families. One commenter suggests requiring an umbrella insurance policy instead of an aggregate limits policy.

Response: Section 203(b)(1)(E) of the IAA requires that a standard be in force that provides for ''adequate liability insurance for professional negligence and any other insurance that the Secretary considers appropriate.'' Therefore, the issue is not whether to have a standard requiring professional negligence insurance (also referred to as professional liability insurance), but what amount is ''adequate'' and whether additional insurance requirements are ''appropriate.'' For this reason, the Department is maintaining an insurance standard.

The Department has revised the standard, however, to require that professional liability insurance be maintained in amounts reasonably related to exposure to risk, but in no case in an amount less than $1,000,000 in the ''aggregate.'' As discussed at section III, subsection B.1 of the preamble, the Department made this decision after reviewing the range of comments on this issue and engaging a consultant to gather additional information on available insurance coverage and industry practices in underwriting policies. In summary, we now believe that approving a $1 million aggregate standard instead of $1 million per occurrence is adequate and appropriate. Setting the standard to require a minimum of $1 million in the ''aggregate'' establishes an outer limit on total coverage and not a per incident or claim limit.

Setting the standard only for coverage in the aggregate potentially provides more flexibility to both agencies and persons seeking insurance and the underwriting company to set lower ''per occurrence'' limits within the $1 million aggregate coverage, should the market respond by offering policies tailored to the Convention standard. Setting the amount of coverage required in the aggregate at $1 million, while still requiring that coverage be related to actual risk, also strikes a balance between the burden the insurance standard imposes on agencies and persons seeking to provide Convention adoption services and protecting the interests of birth parents, prospective adoptive parent(s), and children.

The final rule standard in § 96.33(g) continues to require the agency or person to use a risk assessment to determine the actual amount of professional liability insurance to be maintained under § 96.33(h)—that is, to determine if more coverage than the minimum is appropriate.

7. *Comment:* Some commenters are concerned that specifying an insurance amount will encourage lawsuits for that amount or greater. Another commenter thinks that the insurance requirement will keep agencies and persons from placing special needs children due to fear of increased litigation.

Response: As noted, the Department cannot avoid drafting a professional liability insurance standard, because the IAA explicitly requires agencies and persons to have ''adequate'' professional liability insurance. Requiring a certain amount of insurance coverage in the aggregate, rather than per occurrence, should reduce the likelihood of increased litigation, since plaintiffs will not consider that they can necessarily receive the total amount. The Department does not believe that the insurance requirement will discourage agencies and persons from placing special needs children. If an agency or person is in compliance with the disclosure requirements of § 96.49, then it will disclose to prospective adoptive parent(s) any known special needs of the child, which should help decrease the number of claims against agencies or persons.

8. *Comment:* Commenters are concerned about the cash reserve provision in § 96.33(e). Commenters also seek insertion of the word ''charitable'' to § 96.33(f).

Response: We have reduced the period of time for which the agency or person must maintain on average financial resources to meet its operating expenses to two months. We also changed § 96.33(e) to allow assets, as well as cash reserves and other financial resources, to be taken into account in determining whether the agency is maintaining sufficient financial resources. These changes are meant to reduce the burden that this standard imposes on agencies and persons, while still requiring sound financial practices. We have also amended the standard to require the agency or person to take into account not only its projected volume of cases, but also its size, scope, and financial commitments.

We have also inserted the word ''charitable'' before donation in § 96.33(f), as we agree that only charitable donations should be accepted under the standard.

9. *Comment:* Some commenters, as noted in other subparts, were concerned about the case transfer procedures, and the respective roles of accrediting entities and agencies and persons in the transfer of cases.

Response: As discussed in detail in the responses to comments on §§ 96.7 (above), 96.77 (below), and 96.87 (below), we have modified a number of provisions in the rule relevant to Convention case transfers in the event that an agency or person is no longer providing services in Convention adoption cases. Our modifications include adding a standard in § 96.33(e) to require that an agency or person must have a plan in place to transfer Convention cases if it ceases to provide or is no longer permitted to provide adoption services in Convention cases. The plan must include provisions for organized closure and reimbursement to clients of funds paid for services not rendered.

Section 96.34—Compensation

1. *Comment:* A commenter suggests that it is standard practice to pay incentive fees to individuals who refer prospective adoptive parent(s) and questions why commissions, incentives, and contingency fees cannot be paid to a person providing a referral.

Response: Section 96.34(a), which is limited to individuals providing intercountry adoption services, does not directly deal with the issue of clients who are paid incentives for referring other potential clients, such as prospective adoptive parent(s), to an agency or person. This practice must conform, however, to the general principle that fees may not be paid if they are made contingent on placing or locating a child for an adoptive placement.

The Convention directs public foreign authorities and public domestic authorities to prevent improper financial gain in connection with an intercountry adoption. Further, section 203(b)(1)(A)(iv) of the IAA specifically bars agencies and persons from retaining personnel on a ''contingent fee basis.'' Generally speaking, a fee is contingent if it is only paid if an adoption is completed. The standard prohibits contingency fees consistent with the IAA statutory mandate. We are maintaining the prohibition in § 96.34(a), and have clarified that the standard prohibits contingency fees for each child ''located'' for an adoptive placement, in addition to contingency fees for each child ''placed'' for adoption.

2. *Comment:* Commenters who would like the financial aspects of the adoption process to be more transparent suggest that agencies or persons be required to account for all revenues and that any

payments made to third-party vendors who are related to a staff member of an agency or person should be required to be reported along with information stating the amount of payment and the type of service rendered. Many other commenters support the proposed compensation regulations stating that they provide reasonable guidance to agencies on how to structure compensation for intercountry adoptions.

Response: The Department has maintained the general structure of § 96.34 and has added § 96.34(f), which requires that agencies and persons identify any third-party vendors to whom clients are referred for non-adoption services. The agency or person must disclose any corporate, financial, or familial relationship with such vendor. We have also made a related change to § 96.40(c)(1), setting a standard that requires disclosure of all third-party fees to prospective adoptive parent(s). For more information on the reasons for this modification, see the responses to comments for § 96.40(c).

3. *Comment:* Commenters seek clarification as to whether or not fees-for-services constitute incentive fees. They recommend that employees and supervised providers be paid an hourly rate or salary for services actually rendered, not on a contingency fee basis. Paying employees or supervised providers a regular salary minimizes the incentive for a person to make more referrals to earn higher fees.

Response: Fees for adoption services do not constitute incentive fees. We have clarified in § 96.34(a), however, that the standard disallows any contingency fee arrangements related to locating or placing a child for adoption. For further information, see the response to comment 1 for § 96.34.

4. *Comment:* Commenters question what or who will determine whether the fees, wages, and salaries paid to the directors, officers, and employees of an agency or person are ''unreasonably high.'' One commenter feels that a free enterprise system should determine fees, wages, and salaries. Other commenters recommend that fees, wages, and salaries be evaluated in light of the country's economy and be commensurate with the cost of living in the country of origin.

Response: The concept of ''reasonableness'' does not lend itself to bright line rules, but rather requires an assessment in light of a variety of relevant factors. We have crafted standards in § 96.34(d) and (e) that identify the factors the Department believes should be considered in determining if fees, wages, or salaries paid are unreasonably high in relation to services rendered. We have made one change to guide this analysis, requiring that the compensation be judged by taking into account the country in which the adoption services were provided and the relevant norms for compensation within that country, to the extent known to the accrediting entity. We have also added supervised providers to the list of those whose compensation must meet the reasonableness standard of § 96.34(d). We believe this approach, which avoids inappropriately setting caps or range limits on salaries and wages, will be workable, particularly because accrediting entities will often have access to comparable data on agencies and persons under their authority.

Ethical Practices and Responsibilities

Section 96.35—Suitability of Agencies and Persons To Provide Adoption Services Consistent With the Convention

1. *Comment:* To ensure that the referral process is based on fair, legal, and objective criteria, one commenter requests that the Department monitor the ethical practices of those involved in the referral process.

Response: It is difficult to police unethical practices in referrals of children eligible for adoption from countries of origin. Nevertheless, § 96.46 sets out standards that an agency or person must follow in using supervised providers in other countries, including by ensuring that such foreign supervised providers do not engage in practices inconsistent with the Convention's principles of furthering the best interests of the child and preventing the sale, abduction, exploitation or trafficking of children. See also the responses to comments on § 96.46.

Ultimately, however, it is the responsibility of the country of origin's competent authorities to ascertain if Article 4 requirements for determining if a child is eligible for adoption have been met. If it appears that the Central Authority or public foreign authorities of a country of origin have improperly referred a child who is not eligible for adoption, then the two Central Authorities (country of origin and receiving country) involved will need to resolve the problem.

2. *Comment:* A commenter requests that language on ethical standards be mandatory. The commenter also wants the Department to make the oversight mechanisms related to specific standards more explicit. Other commenters support the standards on suitability as written. One of these commenters thinks that the proposed standards will help agencies and persons uphold high ethical practices when providing adoption services.

Response: The issue of mandatory standards is discussed in the responses to comments on § 96.27 and at section II, subsection B of the preamble, above. The regulations include numerous ethical standards. The extensive disclosure standards in § 96.35, which remain largely unchanged from the proposed rule, are designed to ensure that agencies and persons are not violating any ethical standards or any of the guiding principles of the Convention or the IAA, except that § 96.35(c) does have new language to clarify that the disclosure requirements for agencies and person require disclosure of information related to individual directors, officers, and employees associated with the agency or person in any operations under a different corporate or professional name. State licensing regulations or other State laws also may contain mandatory ethical standards for agencies, persons, or individuals in certain professions.

3. *Comment:* One commenter requests that the provisions in § 96.35 include any individual working for the agency or person if such individual is involved in any of the ''adoption services'' defined in § 96.2.

Response: Section 96.35(c) requires an agency or person (for its current and any former names) to disclose information about its directors, officers, and employees to the accrediting entity. (Section 96.35(d), as well, requires disclosures from persons who are individual practitioners.) Thus, this standard already requires the disclosures related to individuals providing adoption services requested by this comment. Also, as noted previously, § 96.32(e)(3) now requires that the agency or person disclose the names of any entity it intends to use, or is using, as a supervised provider.

4. *Comment:* Some commenters request that an agency or person be required to disclose any instance in which it lost its license, even for a brief period of time. Other commenters are concerned that agencies and persons providing multiple services will be denied accreditation or approval because their license was suspended or permanently revoked for violations in service areas other than intercountry adoption.

Response: The Department has changed § 96.35(b)(1) to delete the word ''permanently.'' Thus, an agency or person will need to disclose any instances in which it lost the right to provide adoption services for any period of time in any State or country. In

addition, the Department has changed § 96.35(b)(5) to make it clear that an agency or person (under its current or any former names) must disclose to the accrediting entity information on complaints related to the agency's or person's provision of adoption-related services filed with any State, Federal, or foreign regulatory body of which the agency or person was notified. A change was also made to § 96.35(b)(6) to require disclosures of government investigations, criminal or child-abuse charges, or lawsuits related to the provision of child welfare or adoption-related services. We have not changed the requirement that the agency or person disclose any licensing suspensions for cause or sanctions by oversight bodies, as we believe such information will be valuable to the accrediting entity even if the license pertained to another service area.

5. *Comment:* Some commenters recommend that the Department keep the requirement in § 96.35(b)(5) that agencies and persons disclose to accrediting entities any disciplinary actions or written complaints, including the basis and disposition of such complaints, for the past ten years. Other commenters feel that the ten-year requirement is too long and recommend three to five years. Several commenters recommend that agencies and persons have to disclose only substantiated written complaints or lawsuits in which the agency or person was found liable. Commenters are also concerned that unsubstantiated accusations will delay an agency's or person's accreditation/approval application if ''written complaint'' is not more clearly defined in § 96.35(b)(5). Other commenters are concerned that information about lawsuits will not be disclosed because of confidentiality provisions in any settlement agreements.

Response: We have modified § 96.35(b)(5) to limit the disclosure requirement to those written complaints filed with any State or Federal regulatory body and of which the agency or person was notified. The agency or person must still disclose the outcome of all such complaints.

The Department declines to change the ten-year requirement for disclosure of complaints in § 96.35(b)(5), because we believe ten years of information will best allow accrediting entities to make an informed accreditation determination. We also have not changed § 96.35(b)(6), notwithstanding the concern that confidentiality provisions in settlement agreements will prevent disclosure of information about lawsuits. We do not want agencies or persons to be prevented from applying because another party is unwilling to modify the disclosure provisions of a settlement agreement, and the accrediting entity will have ample authority to determine, on a case-by-case basis, what steps an applicant should be asked to take to provide sufficient information about the basis and disposition of a lawsuit, including seeking a waiver of any confidentiality provisions.

6. *Comment:* One commenter states that the term ''malpractice complaint'' in proposed rule § 96.35(b)(6) is a subset of ''written complaints'' in § 96.35(b)(5), while others appear to believe that it is not a duplicative term.

Response: The Department has modified § 96.35(b)(6) to delete reference to ''malpractice complaints.'' The requirement to disclose the basis and disposition of lawsuits related to the provision of child welfare or adoption-related services in § 96.35(b)(6) is sufficient to cover malpractice complaints.

7. *Comment:* Commenters are concerned that States, as well as agencies and persons, have not kept sufficient records of every complaint. Commenters suggest that parents send all past complaints to accrediting entities for review. Several commenters request that a central registry be established to record and verify that an agency or person is in good standing.

Response: We have revised the standard at § 96.35(b)(5) to limit the complaints that must be disclosed to written complaints over the prior ten-year period that were filed with Federal authorities or public domestic authorities, and of which the agency or person was notified. This is more congruent with the disclosure requirement in § 96.35(b)(6) related to lawsuits and other investigations by governmental authorities, and clarifies that the intent is to require disclosure of complaints filed with regulatory authorities, such as licensing authorities, rather than complaints made directly to the agency or person. We believe the agencies or persons will ordinarily have information about such significant complaints available, even for the period before these regulations take effect.

After the initial round of accreditation/approval has been concluded and the Convention has entered into force, the accrediting entity will also have available to it information on complaints made directly to the agency or person, under § 96.41. This standard requires accredited agencies and approved persons to keep written records of complaints against them as well as the steps taken to investigate and respond to the complaints. These written records must be made available to the accrediting entities and the Department, upon request.

8. *Comment:* One commenter suggests that agencies and persons evaluate the moral character of their employees, associates, and supervised providers.

Response: Section 96.35(c)(5) requires disclosure of businesses or activities that have been or are currently carried out by individual directors, officers, or employees of the agency or person, which are inconsistent with the principles of the Convention. Additionally, § 96.35(b)(9) requires an agency or person to disclose to the accrediting entity their prior or current association, if any, with businesses or activities that are inconsistent with the principles of the Convention. The Department believes these standards provide specific guidance to accredited agencies and approved persons on ethical adoption practices. To the extent that the ''moral character'' of individual employees is a separate issue, it is beyond the scope of these regulations.

9. *Comment:* Commenters request that background checks be conducted on all employees of an agency or person. One commenter notes that the proposed rule requires that some employees have background checks, and notes that States may not be able to complete criminal background checks and child abuse clearances for such individuals without additional statutory authority.

Response: Section 96.35(c)(3) requires an agency or person to disclose to the accrediting entity the results of a criminal background check and child abuse clearance for U.S. employees of agencies or persons who work directly with parent(s) or children, as well as for those in senior management positions (unless such checks have been included in the State licensing process). This requirement furthers the IAA's mandate that the agency or person must have a sufficient number of appropriately trained and qualified personnel.

The accrediting entity must have criminal and child abuse background information for this subgroup of employees to assess if they are capable of safely providing services directly to children and their families. Broadening the group of employees subject to these background checks would not substantially contribute to the accrediting entity's evaluation of the agency's or person's capacity to provide adoption services, however, and would not warrant imposing the financial burden, administrative burden, and other complexities associated with obtaining and considering background

information in the hiring process of all employees.

This regulation of course cannot in itself authorize States to implement criminal background investigations and child abuse clearances. The Department recognizes that, while the use of criminal and child abuse background checks is standard in many States, especially in the context of employees who work with children, other States specify unique parameters and restrictions for obtaining and using criminal background checks. In addition, criminal background checks may invoke protections of other Federal laws, such as the Fair Credit Reporting Act. To be clear, § 96.35(c)(3) does not supersede or supplant any other Federal or State statute or regulation that might otherwise restrict access to or consideration of background checks. If the State criminal background check is unavailable by operation of State law, then the agency or person can so demonstrate.

10. *Comment:* One commenter requests that agencies or persons be required to disclose whether or not they have ever operated under a different corporate name.

Response: Both § 96.35(b) and (c) now require disclosures related to operations under a different corporate name, as does § 96.32(e). The Department made these changes so that agencies and persons could not avoid disclosing information by applying for accreditation or approval under a different name than they formerly used. See also responses to comment 3 on § 96.32 and comment 11 on § 96.35.

11. *Comment:* Commenters request that an agency or person be required to disclose any financial irregularities on the part of the agency or person and any of its employees. Commenters recommend that an agency's or person's previous business history be included with its application for accreditation or approval. Commenters also request that agencies and persons be required to disclose any current and past business activities that are inconsistent with the principles of the Convention.

Response: We modified the rule to require agencies and persons to make disclosures to accrediting entities about individual directors, officers and employees under not only their current corporate names, but also under any former names. Additionally, § 96.35(c)(2) requires an agency or person to disclose any convictions or current investigations for acts involving financial irregularities by directors, officers, or employees in senior management positions. The Department does not require such disclosure for all employees because we believe it sufficient to focus on the acts of senior management personnel—that is on those in a position to control and manage the agency's or person's finances. Also, to ensure compliance with the Convention's principles, the regulations have been changed at § 96.35(c)(5) to require disclosure of businesses or activities that are inconsistent with the principles of the Convention and that ''have been or are currently'' carried out by individual directors, officers, or employees of the agency or person.

12. *Comment:* One commenter believes that social workers, like lawyers, should be required to provide a certificate of good standing from their State licensing authority. If they are not in good standing, the social worker must provide an explanation and supporting documentation. The commenter recommends that any disciplinary action taken against the individual should be immediately reported to the State licensing authority and the accrediting entity.

Response: To ensure the high standards of social workers who operate as approved persons and provide Convention adoption services, the Department has added a standard at § 96.35(d)(4) to require social workers seeking approval to provide a certificate of good standing or an explanation, accompanied by relevant documentation, of why he or she is not in good standing, for every jurisdiction in which he or she has been licensed. If an accrediting entity takes adverse action against a social worker acting as an approved person that alters his or her approval status, the accrediting entity must report that adverse action to the State licensing authority, pursuant to revised § 96.77(d).

Section 96.36—Prohibition on Child Buying

1. *Comment:* A commenter believes that there is already a prohibition against child buying in DHS regulations and asks the reason for re-writing the law.

Response: The current DHS prohibition on child buying, codified at 8 CFR 204.3, applies to intercountry adoption procedures, as defined in the INA and DHS regulations. For a standard to be effective in the accreditation/approval context, however, it must be included in the Department's accreditation and approval regulations, 22 CFR Part 96. Otherwise, the standard may not be used as a basis for denying accreditation/approval or taking adverse action. Thus, the standard in § 96.36 is not duplicative. To be consistent with the DHS regulation, the requirements of § 96.36 are generally the same as those of 8 CFR 204.3.

2. *Comment:* Some commenters request that the regulations stipulate what type of expenses can be paid, and under what circumstances, to avoid coercive situations and to protect children and birth parents. A commenter recommends that there be no expansion in the type of adoption services expenses that can be covered in an individual case. Other commenters are very concerned that the standard not include prohibitions against certain expenses that are permitted or required by countries of origin, to avoid precluding U.S. citizens' eligibility to adopt in certain Convention countries.

Response: The Department believes that these concerns are already addressed in the rule, so that no revision is required. First, the standard in § 96.36(a) clearly prohibits agencies and persons from ''giving money or other consideration, directly or indirectly, to a child's parent(s), other individual(s), or an entity as payment for the child or as an inducement to release the child.'' This means that, if the intent of any payment is to buy a child or to obtain consents for adoption, then the agency or person has violated this standard. This standard, derived from the current, longstanding DHS regulations at 8 CFR 204.3, protects birth parents, children, and adoptive parents. Regardless of how adoption services fees are described, characterized, or classified, if the fee is remitted as payment for the child, or as an inducement to release the child, then the standard is violated and appropriate action may be taken against an agency or person. The standard takes into account that the country of origin's adoption laws and procedures, not the Department's regulations on U.S. adoption service providers, determine what type of expenses, such as the care of the child or contribution for child protection services, must be covered as part of the adoption services fees. The Convention country of the child's origin has the authority to determine allowable adoption expenses in that country as long as the expenses are consistent with the Convention requirements of Article 4 (consents may not be induced by payment or compensation of any kind) and other requirements are followed. In its role as Central Authority, the Department can, however, communicate any concerns about a country of origin's laws and provisions for allowable adoption services expenses.

Finally, to address the concerns of commenters who believe the broad prohibition against child-buying could

be interpreted by accrediting entities to exclude certain types of fees, such as the charitable contribution required in China, the standard highlights that, if permitted or required by the child's country of origin, reasonable payments for the provision of child welfare and child protection services may be made. The Convention and the IAA do not prohibit contributions to support family and child protection services in Convention countries. If the contribution is not intended to induce an individual to place a child for adoption, it is not inconsistent with these accreditation/approval standards. Therefore, we are not prohibiting a required contribution to an orphanage or State welfare organization in a child's Convention country. In § 96.40(b)(6), however, we do require that the client receive an explanation of the intended use of the contribution and the manner in which the transaction will be recorded and accounted for. Overall, we believe that the standard is responsive to the significant concerns about having the flexibility to take account of Convention country practices while upholding the basic principle against payments for a child.

3. *Comment:* Several commenters believe that setting fee limits for adoption services is the only way to prohibit child buying.

Response: Please see § 96.34(a) and (d) and the responses to comments on these sections, above. Although we understand and share the commenters' concerns regarding fee limits, this rule does not set fee caps for adoption services and the Department has no authority under the IAA to set fees for adoption services. Setting caps would be impractical and difficult to enforce, especially if the expectation was that the Department would somehow make countries of origin conform to the Department's fee structure. We would be unable to set fee caps that would take into account all of the variables in the various countries that are involved in Convention adoptions, not to mention the fluctuations in exchange rates and currency values. We do agree, however, that the services the fees relate to should be readily transparent, provided to clients, and subject to accrediting entity oversight. Thus, we have included standards in § 96.40 that require agencies and persons to provide prospective adoptive parent(s) with extensive information on fees and expenses related to the adoption.

4. *Comment:* Several parents wish to ensure that any agency that gives money or other consideration as payment for a child will lose its State license to be an adoption agency.

Response: States, not the Federal government, license agencies. Because State law governs licensing issues, we do not have the authority to revoke State licenses. To be responsive to the concerns behind this comment, however, we have modified the standard in § 96.77(d) to make it clear that an accrediting entity must notify the State licensing authority of the agency or person in question if the accrediting entity takes adverse action that impacts the accreditation or approval status of the agency or person.

5. *Comment:* One commenter requests that birth parents be made aware of how to pursue complaints.

Response: Under § 96.41(a) agencies and persons must provide contact information for the Complaint Registry to their clients, including birth parents in cases of children emigrating from the United States to a Convention country. Section 96.41(b) also requires agencies and persons to permit any birthparent to lodge complaints about adoption services.

In cases of children immigrating to the United States, the child's Convention country should address birthparent complaints about violations of the Convention. Once a complaint has been lodged with the child's Convention Country, the authorities of that country have the responsibility to investigate the matter and to ensure compliance with the Convention. If the complaint involves a U.S. agency or person, the Central Authority may communicate the complaint directly to the Department, to the Complaint Registry or to the accrediting entity overseeing the agency or person at issue.

6. *Comment:* One commenter requests that all parties involved in an adoption proceeding sign a sworn statement stating how much compensation they received for adoption services as a prerequisite to approval of a petition on behalf of the adopted child to enter the United States. The commenter believes this statement should include a declaration that the parties have not paid any illegal sum to officials or made any other illegal payments.

Response: We are making no change in response to this comment. The concern expressed may be addressed, in part, by the fee transparency provisions of the rule, but these regulations governing the accreditation/approval of adoption service providers are not an appropriate vehicle to address the conduct of parents or impose additional requirements on the DHS petition process.

7. *Comment:* One commenter states that it is critical to have defining criteria that will determine what constitutes ''reasonable'' payment for services in § 96.36. Another commenter wants no change in the language defining ''reasonable payments for activities'' because it provides an appropriate level of specification.

Response: The Department has not changed the language in § 96.36, setting the standard that payments for necessary activities related to adoption be reasonable, because it mirrors the principles in the Convention and the IAA.

8. *Comment:* One commenter suggests the creation of a central organizing authority that would verify relinquishments before a child is placed in an adoption-related orphanage.

Response: This suggestion is beyond the scope of these regulations on accreditation/approval. Pursuant to Article 4 of the Convention, the competent authority in the child's Convention country (depending upon the country of origin, this may be the Central Authority, a court, or other government authority) has the obligation to ensure that consents to an adoption have been given freely and without inducement or compensation of any kind.

9. *Comment:* Two commenters request that the agency or person ensure that employees and agents are aware of the prohibitions of the Foreign Corrupt Practices Act (FCPA) as enumerated at 15 U.S.C. 78-dd. They believe the FCPA has been underutilized and should be employed more often.

Response: The FCPA is an anti-bribery statute that agencies and persons already must comply with regardless of these regulations. The Department of Justice is responsible for all criminal enforcement of the FCPA and shares authority over civil enforcement with the Securities and Exchange Commission. We note in response to this comment that, under § 96.72, an accrediting entity must refer to the Attorney General or other law enforcement authorities any substantiated complaints that involve conduct that is in violation of Federal law, an obligation that encompasses the FCPA. We have not added a specific reference to the FCPA in the standards because the standards similarly require agencies and persons to comply with all relevant State and Federal law, again encompassing the FCPA. We note, as well, that the standards on compensation (§ 96.34) and prohibiting child buying (§ 96.36) should help prevent agencies and persons from engaging in behavior that might trigger the FCPA.

10. *Comment:* Several commenters are concerned that the current regulations

provide no complaint or investigative process for handling allegations of abusive practices. They request that monitoring and enforcement procedures be outlined. Commenters request that the Department carefully consider when, how, and by whom investigations will be done to ''prevent the abduction, sale of, or traffic in children'' and to ensure the regulations provide the tools such investigators need to fulfill these responsibilities.

Response: Civil monitoring and enforcement procedures are outlined in detail in subparts J and K of these regulations. Specifically, pursuant to § 96.72, certain substantiated complaints must be reported promptly to the Department, and, as appropriate to State licensing authorities, the Attorney General, or other law enforcement authorities. We share the commenters' concerns regarding conduct in the child's country of origin; these issues are discussed in the responses to comments on § 96.46 on foreign providers, and above at section II, subsection D and section III, subsection A.2 of the Preamble.

11. *Comment:* One commenter would like the regulations to place increased responsibility on U.S. agencies and persons to work with supervised providers in Convention countries that do not participate in child buying.

Response: The regulations in § 96.46 clearly provide that any agency or person that works with a foreign supervised provider is responsible for requiring that the foreign supervised provider adheres to the standard in § 96.36(a), which prohibits an agency or person from giving money or other consideration, directly or indirectly, to a child's parent(s), other individual(s), or entity as payment for the child or as an inducement to release the child.

Professional Qualifications and Training for Employees

Section 96.37—Education and Experience Requirements for Social Service Personnel

1. *Comment:* A commenter is concerned that requiring an agency or person to only use employees to perform adoption-related social service functions will create serious problems for small agencies or persons. Small agencies and persons often hire non-employees to conduct home studies because they do not have the resources to employ full-time social workers.

Response: These regulations do not prohibit an agency or person from using independent contractors instead of employees to provide adoption services. It is critical to understand, however, that any such individuals, regardless of whether they are called contractors, agents, facilitators, assistants, volunteers, etc., are considered as supervised providers if they provide adoption services, unless they qualify as an exempted provider in the United States or perform a service abroad qualifying for verification under § 96.46(c). An agency's use of supervised providers must adhere to the standards in §§ 96.45 and 96.46.

2. *Comment:* Some commenters request that the ''appropriate qualifications'' in § 96.37(a) be defined more specifically.

Response: We do not think a line-by-line description of credentials for every possible job with any agency or person is necessary. We believe that the accrediting process will permit accrediting entities to compare personnel credentials for covered positions with industry norms to ascertain if the standard set forth in § 96.37(a) has been met.

3. *Comment:* Most, though not all, commenters agree that a master's degree in social work (MSW), or a related field, is not a necessary qualification for home study preparers, as the proposed rule required at § 96.37(f). Suggestions for a standard on home study preparers' education and experience ranged from requiring a bachelor's degree in social work (or another related field) and experience with intercountry adoption, to requiring an MSW, at least four years experience in intercountry adoption, and country-specific training. Others requested that the Department consider a ''grandfather'' clause in § 96.37(f), like the one in § 96.37(d)(3), to exempt current practitioners from the master's degree requirement. Other commenters believe that the proposed regulations provided adequate flexibility because agencies or persons could hire MSWs as supervisors or other qualified professionals with an educational background in a related human services field.

Response: We have eliminated the master's degree requirement for home study preparers employed by agencies and persons, because we understand that it may be difficult to retain social workers with a master's degree in some locations and that requiring professional degrees for all home study preparers would substantially increase salary costs, especially for small agencies. We have changed the regulation so it now requires that such employees be: (1) Licensed or authorized to conduct a home study under the laws of the State in which they practice; (2) in compliance with INA requirements for home study preparers in 8 CFR 204.3(b); and (3) supervised by an employee of an accredited agency or approved person that meets the educational and experience requirements of § 96.37(d). We have also discussed this change at section III, subsection B.2 of the preamble.

4. *Comment:* Other commenters were concerned that the degree requirements in § 96.37(e) for non-supervisory employees providing adoption services which require the application of clinical skills and judgment are too restrictive.

Response: We have modified § 96.37(e) so that non-supervisory employees providing non-exempt adoption services that require the application of clinical skills and judgment must have at least a bachelor's degree in any field and prior experience in family and children's services, adoption, or intercountry adoption. Such employees must be supervised by an employee of the accredited agency or approved person who meets the educational and experience requirements in § 96.37(d). This adjustment should enable agencies and persons to recruit and retain the non-supervisory personnel they need to complete Convention adoptions.

5. *Comment:* A commenter is concerned that requiring child background study preparers to hold an MSW or other Master's degree will hinder Convention adoptions. The commenter believes it will have difficulty finding child background study preparers overseas that can meet this requirement; in its experience, countries from which children are often adopted into the United States rarely have schools of social work, let alone Master's degree programs.

Response: The questioner appears to be referring to an incoming case, in which a child background study would be prepared by a foreign supervised provider or by a foreign provider and verified under § 96.46(c)). In such a case, the standards in § 96.37 would not apply to the child background study preparer.

With respect to an employee of a U.S. agency or person, we have revised § 96.37(g) to remove the Master's degree requirement for employees that prepare child background studies. This change applies to all employees, whether in the United States or abroad. Please see the response to comment 3 on this section, and section III, subsection B.2 of the preamble for further related discussion.

6. *Comment:* A commenter recommends adding a new standard as § 96.37(h), to guard against agencies or persons creating subsidiaries to conduct home studies as exempted providers, to evade hiring personnel that meet the

education and experience requirements in § 96.37, which the commenter appears to believe agencies and persons will find to be too onerous. The commenter believes that a standard is needed to state that when there is overlapping funding, supervision, personnel, or office space between ''exempt'' home study providers and non-exempt agencies or persons, that the home study providers are not, in fact, exempt.

Response: We are not adding a new standard in response to this comment, as we believe that the accrediting entity will have adequate authority under these regulations to determine whether or not an agency or person is improperly evading compliance with the standards in § 96.37 by creating a ''shell'' exempted provider, and take adverse action as appropriate. The adjustment in the final rule to remove the Master's degree requirement for home study preparers employed by an agency or person may also address the commenter's concern that agencies or persons will be tempted to create subsidiaries to try to evade hiring employees that meet the standards in § 96.37.

7. *Comment:* A commenter asks that the Department regulate caseload size. They believe that a caseload of 30–35 should be the absolute maximum for intercountry adoption.

Response: While we understand the concern about large caseloads, the Department is not persuaded that a specific caseload limit should be a standard for accreditation or approval. We expect accrediting entities to conduct oversight, pursuant to subpart I, to ensure that an agency or person is providing quality services in substantial compliance with these standards.

Section 96.38—Training Requirements for Social Service Personnel

1. *Comment:* A commenter believes that an agency or person must provide new employees training on the Convention, the IAA and Federal regulations, but that such training is unnecessary for licensed social workers who will have significant knowledge in this area.

Response: The training requirements in § 96.38 apply to all employees of the agency or person. We believe that training of social services personnel involved in intercountry adoptions is so essential that we also effectively impose the § 96.38 training requirements on supervised providers in the United States, pursuant to § 96.45(b)(2). In recognition of the concern expressed above, however, § 96.38(d) provides that an agency or person may exempt employees from the elements of the orientation and initial training required by § 96.38(a) and (b) if the employee has demonstrated experience with intercountry adoption, the Convention, and the IAA. We have changed § 96.38(d) to make clear that current as well as newly hired employees may be exempted from training, so that the burden and financial impact of training current employees is limited, and by changing the phrase ''prior experience'' to ''demonstrated experience,'' to give agencies and persons flexibility when their newly hired and current employees already have experience with intercountry adoption and knowledge of the Convention and the IAA.

2. *Comment:* Commenters requested that personnel receive balanced training that is uniform and consistent throughout the intercountry adoption community. Specifically, one commenter believes that personnel should be trained about both the positive and negative aspects of intercountry adoption. Another commenter recommends that employee training include a course on ethical considerations in intercountry adoption.

Response: We believe that the extensive list of topics that must be covered under § 96.38 will ensure that balanced training is provided. We have added a requirement to § 96.38(a)(5) that the training include a discussion of ethical considerations in intercountry adoption. Section § 96.38(b)(6) also includes a requirement for agencies and persons to provide training on adoption outcomes and the benefits of permanent family placement.

3. *Comment:* Commenters request clarification that, during initial employee training, training in ''child, adolescent, and adult development'' applies to the development of the adopted child, and does not require training in human development in general.

Response: We agree and have clarified § 96.38(b)(10) accordingly.

4. *Comment:* Commenters want to know whether or not the training requirement in § 96.38(c) is in addition to any training that may already be required by their State. If so, commenters state that the regulation would require many employees to perform 30–40 total hours of annual training, with the high costs of such training passed on to prospective adoptive parent(s).

Response: We have clarified in § 96.38(c) that continuing education hours required under State law may count toward the training requirement, as long as the training meets the substantive requirements of the standard by being related to current and emerging adoption practice issues.

5. *Comment:* A commenter asks if the required training courses must be approved or accredited and, if so, what governing body will accredit or approve the courses. Other commenters recommend that employees should be required to document training.

Response: Because of the variety of training opportunities and variance in available training opportunities according to geography, the Department has not mandated that training be accredited or approved by any particular entity, and has added documented distance learning courses as another example of an acceptable means to provide training under § 96.38(c). When the accrediting entity evaluates whether an agency and person complies with § 96.38, the agency or person will have to provide some reliable documentation that confirms that employees received (or qualified for exemption from) the required training. The accrediting entity's on-site evaluators will check both the training records and the content of the training materials used to ensure that they are covering the content areas required under § 96.38. We do not believe, however, that it is necessary in regulations to detail what kind of documentation must be used.

6. *Comment:* One commenter strongly endorses the minimum requirement of twenty hours of training for an agency's or person's employees who provide adoption-related services, while others think that twenty hours of annual training is excessive. One commenter proposes a compromise, suggesting a reduction in training hours and/or extending the period to complete the training. Another commenter opposed the training requirements altogether, while still others endorsed the training requirement as written.

Response: We are persuaded that requiring thirty hours of training over a two-year period is reasonable and have changed the rule accordingly. Using the time frame of two years provides flexibility, and reducing the hours from twenty per year to approximately fifteen per year reduces the time burden and cost to agencies and persons. At the same time, the standard helps to ensure that those providing social services involving clinical skills and judgment receive ongoing training on adoption practice issues.

7. *Comment:* A commenter requests clarification regarding whether or not staff exempted from initial training are still required to complete the continuing training in § 96.38(c).

Response: Staff exempted from orientation training in § 96.38(a) and (b) are still required to complete the training requirement of thirty hours in a two-year period under § 96.38(c). Thus, both new hires that become incumbents and incumbents must get thirty hours of training over each two-year period of their employment with the agency or person.

8. *Comment:* Commenters request that the Central Authority take a greater role in collating and disseminating best practices and translated copies of foreign adoption laws and other adoption related information and establish a resource library as part of its duties under Article 7(2)(a) of the Convention.

Response: We understand the need for best practices guides and pamphlets and the interest in a resource library. The Central Authority duties of the Department are, however, outside the scope of these regulations, which lay out the rules regarding accreditation and approval of agencies and persons.

Information Disclosure, Fee Practices and Quality Control Policies and Practices

Section 96.39—Information Disclosure and Quality Control Practices

1. *Comment:* Some commenters think that it is unduly burdensome for agencies and persons to provide a sample contract to prospective adoptive parent(s) at initial contact, as required in § 96.39(a). Other commenters support requiring agencies and persons to provide a sample copy of their contract.

Response: The adoption services contract contains important information about what an agency or person is agreeing to do and what a client is expected to do in a Convention adoption. The Department believes that the information contained in the adoption services contract is critical for prospective clients to consider at the beginning of the adoption process as they compare agencies and persons and determine which services are available from the different providers. Therefore, the Department is not removing the requirement that agencies and persons provide a sample contract to prospective clients upon initial contact.

The Department has taken steps to reduce the burden on agencies and persons of complying with the standards in § 96.39(a). The Department has removed from § 96.39(a)(1), as redundant, the proposed standard that the agency or person provide a separate explanation of the mutual rights and responsibilities of clients and the agency or person. The Department has also deleted § 96.39(a)(3), which would have required disclosures of all entities with whom the prospective client could expect to work in the United States and in the child's country of origin and the usual costs associated with their services. Instead, new § 96.39(a)(2) now requires an agency or person to disclose this information to prospective client(s), upon initial contact, only for all supervised providers with whom the prospective client(s) can expect to work.

2. *Comment:* Commenters request that the Department review several contracts and establish a list of permitted or prohibited clauses to create contract uniformity.

Response: We have taken no action on this request, as we believe it is beyond the scope of this rule's establishment of accreditation/approval standards. In addition, adoption services contracts must still conform to different individual State laws, which would pose serious challenges to developing one uniform model contract.

3. *Comment:* A commenter requests guidance on how agencies and persons should monitor disruptions and dissolutions, in order to comply with § 96.39(b)(1).

Response: Please see the response to comments on § 96.43, which governs the tracking and recording of disruptions and, wherever possible, of dissolutions in Convention adoption cases as required under the IAA for Congressional reporting purposes. In general, the provisions in § 96.39(b)(1) on maintenance and disclosure of disruptions and dissolution statistics to clients mirror § 96.43 and only require agencies or persons to provide the information to clients for the prior three calendar years.

4. *Comment:* Commenters suggest that agencies and persons should also disclose to prospective adoptive parent(s) whether or not any of their current or former clients have been prosecuted for crimes that they committed against their children after the child's adoption.

Response: While the Department shares the commenters' concern about parental abuse of adopted children, we have not made this change. The information might suggest a deficiency in the agency or person's screening of adoptive parents, but it is post-adoption information that will not be consistently available, particularly when agencies do not provide significant post-adoption services. In addition, there are other ways in which an accrediting entity can determine whether proper standards are followed in preparing or approving home studies.

5. *Comment:* A commenter believes that data on the number of parents who apply to an agency or person to adopt each year is proprietary information and requests that we remove § 96.39(b)(2) requiring such information be disclosed, if requested, to clients and prospective clients.

Response: We are not revising the rule in response to this request. Section 203(b)(1)(v) of the IAA mandates that the ''agency discloses fully its policies and practices, the disruption rates of its placements for intercountry adoption, and all fees charged by such agency for intercountry adoption.'' Data on the number of adoption placements is essential to evaluate data on disruption rates. Data on the number of parents who apply to an agency or person to adopt each year is also important to disclose because, in conjunction with the data on placements, it allows prospective clients to judge the agency's policies and practices with regard to how likely and how quickly it is able to arrange placements.

6. *Comment:* A commenter believes that, because there is no way to account accurately for all children awaiting adoption, agencies or persons should not be required to furnish this number to prospective adoptive parent(s).

Response: The Department has changed § 96.39(b)(3) to require that an agency or person make available to prospective adoptive client(s) the number of children eligible for adoption and awaiting an adoptive placement referral via the agency or person. The new language clarifies that an agency or person is only responsible for disclosing the number of children who are awaiting an adoptive placement referral via the agency or person.

7. *Comment:* Many commenters request that § 96.39(d), prohibiting an agency or person from requiring a client to sign a blanket waiver of liability, be omitted. Other commenters request that waivers of liability be prohibited.

Response: The Department has deleted the provision prohibiting blanket waivers of liability from § 96.39(d), as discussed in more detail above at section III, subsection B.3 of the preamble. Section § 96.39(d) of the final rule permits an agency or person to require a client to sign a waiver of liability as part of the adoption services contract if that waiver complies with applicable State law. The waiver must also be limited and specific, and based on risks that have been discussed and explained to the client in the written adoption services contract.

8. *Comment:* As well as requesting that waivers be permitted, commenters make a variety of requests related to the

specifics of such voluntary waivers including: (1) That ''approved'' language be included in voluntary and informed risk waivers; (2) that standard risk waiver forms be developed and used; and/or (3) that country-specific uniform risk waiver forms be mandatory. They believe that, after acknowledging the possible risks, prospective adoptive parent(s) will choose to proceed despite the known obstacles.

Response: It is the responsibility of each agency and person to ensure that any waiver complies with applicable State law, and the Department does not intend to mandate any specific waiver form or language. It would be impracticable and inconsistent with its role for the Department to create a risk waiver form for adoptions. To be clear, it is the responsibility of each agency and person to disclose risks to be assumed by the client that are known at the time the adoption services contract is signed. If risk waiver forms are used, the agency or person must take responsibility for the forms in light of the States and Convention countries involved, and any other relevant factors.

9. *Comment:* Several commenters express deep concern about the burden that the disclosure/waiver provisions and quality control practices in § 96.39 will impose on smaller, nonprofit agencies and persons.

Response: The Department has tried to balance the concerns of small agencies with the goal of protecting prospective adoptees, prospective adoptive parent(s) and birth parents, all within the context of complying with the requirements set forth by the Convention and the IAA. The Department has changed the language of § 96.39(d) to permit a client to sign a waiver of liability, a revision that should help reduce the impact on small agencies by allowing agencies to allocate risks. We did not delete the other information disclosure requirements in § 96.39, because overall we believe they are necessary to implement section 203(b)(1)(A)(v) of the IAA, or otherwise further the purposes of the IAA and Convention.

10. *Comment:* Several commenters raise concerns about how the accrediting entities and the Department will ensure that agencies and persons permit document review and site evaluations when requested.

Response: The Department has clarified the standard in § 96.39(e) so that an agency or person must cooperate with reviews, inspections, and audits by the accrediting entity or the Department. Section 96.25(c) also explicitly provides that accreditation or approval may be denied, or adverse action taken, solely on the basis that an agency or person did not provide requested documents or information, or did not make employees available.

11. *Comment:* A commenter suggests that, because some Convention countries prohibit the use of the Internet to place children for adoption, agencies and persons should be required to inform the accrediting entities at the time of accreditation or approval if they work in such Convention countries, to ensure compliance with such laws.

Response: Each agency or person is responsible for complying with the laws of the Convention country with which it is working, as well as with applicable State and Federal laws. The Department has modified the language in § 96.39(f) to clarify that an agency or person may use the Internet only to place individual children who are eligible for adoption when such use is not prohibited by the State or Federal law or by the laws of the child's country of origin, and then only under the conditions stated in paragraphs (1)–(4). The Department is not requiring, in § 96.39(f), that agencies and persons inform accrediting entities of the laws of Convention countries, however, because we believe that accrediting entities already have the authority, in their discretion, to request that their accredited agencies and approved persons provide the applicable laws of the Convention countries with whom they work so that they can ensure compliance with such laws.

12. *Comment:* Commenters suggest that a new standard be added to require that agencies and persons provide prospective adoptive parent(s) upon initial contact, a statement that all documents and information referred to in § 96.39 are available to them, and that, if the organization has 501(c)(3) status, they may also obtain IRS Forms 990 and 1023.

Response: Section 96.39(a) requires the agency or person to provide significant documents and information to prospective clients upon initial contact. We have changed § 96.39(b) to provide that the agency or person must inform clients or prospective clients of the additional information available under § 96.39(b) and provide it upon request. We believe it is sufficient to disclose the additional information listed in § 96.39(b) only upon request from a client or prospective client, in light of the burden on agencies and persons. We are not adopting the comment as it relates to IRS Forms 990 and 1023, because the rule does not require that an agency or person obtain 501(c)(3) status, and again, do not believe the burden on agencies or persons is warranted. Nothing in this standard would, however, prohibit the agency or person from choosing to provide additional material upon initial contact, or a prospective client from requesting additional material.

13. *Comment:* One commenter requests that agencies and persons be required to disclose to prospective adoptive parent(s) the criteria by which they determine a child's suitability for intercountry adoption.

Response: We have taken no action in response to this request because, under Article 4 of the Convention, the competent authorities or public foreign authorities of the country of origin determine if a child is eligible for adoption, not the agency or person. In an incoming adoption case, the U.S. agency or person, in accordance with § 96.52(b)(2), is responsible only for obtaining from the Central Authority or other competent authority in the country of origin the child background study, proof that the necessary consents to the child's adoption have been obtained (per Article 4 of the Convention), and the necessary determination that the prospective placement is in the child's best interests, and transmitting that information to the prospective adoptive parent(s).

Section 96.40—Fees Policies and Procedures

1. *Comment:* To enable prospective adoptive parent(s) to compare agencies and persons, many commenters request that agencies and persons be required to provide a detailed breakdown or schedule of all fees and expenses in a clear and understandable format, including a list of all individuals that would be involved in the adoption, the services they would provide and how much they would be paid for services rendered. Several commenters highlight the need to have annotated fees and expenses for all costs associated with caring for children and birth parents prior to finalization of the pending adoption. Other commenters note the importance of detailing expenses and fees owed to third parties not acting as supervised providers. One commenter notes that prospective adoptive parent(s) are at times required to subsidize adoption referrals and assignments of children that foreign agencies have made through informal agreements, private connections, or ''inside government relationships.'' The commenter cites payments called ''foreign fees'' requested from adoptive parents that generally exceed $10,000. The commenter recommends that agencies and persons be required to

break down what is included in this ''foreign fee.'' Another commenter is concerned that foreign officials require fees for ''facilitating'' the adoption process. Another commenter requests that the regulations not require a breakdown of expenses but rather list fees in particular Convention countries based on average costs there. Numerous commenters support the regulations as written.

Response: Although we have made a few revisions for clarity, the final rule, like the proposed rule, requires agencies and persons to provide a detailed breakdown of fees and expenses for adoption services. Section 96.40(b) requires an agency or person to disclose the expected total fees and estimated expenses for the following categories:

- Home study;
- Adoption expenses in the United States;
- Foreign country program expenses;
- Care of the child;
- Translation and document expenses;
- Fixed contributions that prospective adoptive parent(s) must make to child protection or child welfare service programs in the child's Convention country or in the United States; and
- Post-placement and post-adoption reports.

In response to concerns about the items covered in the category of foreign country program expenses, we have extracted from that category the costs for the care of the child in the country of origin and listed it in § 96.40(b)(4) as a cost that must be separately identified. We think that identifying this item separately, and listing examples of the types of services that may be covered, will increase transparency in identifying costs that are generally considered part of the foreign country program fee. We have also changed § 96.40(b)(3) to include legal services as an example of foreign country program expenses.

We have also added a category for otherwise undisclosed fees and estimated expenses to § 96.40(c). Section 96.40(c) provides for disclosure of services provided by third parties, and of travel and accommodation expenses arranged by the agency or person, if not disclosed under § 96.40(b). Third-party fees are fees that the agency or person expects that prospective adoptive parent(s) will have to pay directly to a third party, such as a country of origin's Central Authority. This disclosure standard ensures that an agency or person provides in its disclosure for fees and estimated expenses for payments to Central Authorities, translations, and documents and that it discloses whether the prospective adoptive parent(s) will be expected to pay these costs directly to third parties (either in the United States or the child's Convention country), or through the agency or person. This requirement applies regardless of whether the prospective adoptive parent(s) will be billed directly or through the primary provider.

In sum, we believe the final rule provides proper controls on the potential for improper financial gain—a primary goal of the Convention—without imposing unreasonable burdens on agencies and persons. The regulations require a sufficient level of detail about fees and expenses to allow prospective adoptive parent(s) to have a clear understanding of how an agency or person uses fees for services to complete a Convention adoption, thus enabling them to make informed choices when selecting an agency or person to assist with their Convention adoption.

2. *Comment:* A commenter requests that the Department, as the Central Authority, record and track fees to provide a benchmark so that agencies and persons charge similar fees to prospective adoptive parent(s), and that it assess the reasonableness of the fees.

Response: Section 104 of the IAA requires the Department to submit an annual report to Congress on numerous aspects of intercountry adoptions. Pursuant to section 104(b)(7) of the IAA, one element of the annual report is the range of adoption fees charged in connection with Convention adoptions involving immigration to the United States and the median of such fees set forth by the country of origin. Thus, the Department will be tracking the general trends in fees. Specific information on the fees charged by an agency or person for Convention adoptions, must be provided by the agency or person to the accrediting entity pursuant to § 96.43(b)(6). Section 96.40 also requires the disclosure of a wide range of fee information to prospective clients and clients, which should allow prospective adoptive parent(s) to compare fees. The IAA does not, however, give either to the Department or the accrediting entities the authority to regulate the level of fees an agency or person charges to clients, for reasonableness or otherwise.

3. *Comment:* A commenter recommends that an agency or person must fully disclose to prospective adoptive parent(s), in the written adoption services contract, information on adoptive parent eligibility criteria, mutual rights and responsibilities of parents, the role of the agency or person, the services to be provided by the primary provider, the names of supervised providers, its practices, policies and procedures, and its refund policies.

Response: The terms to be included in an agency's or person's adoption services contract are covered by various sections of the regulations. Collectively, these sections require much of the information the commenter believes should be included. Please see responses to comments 1 and 9 on § 96.39 and to comment 2 on § 96.50. Additionally, § 96.51(b) requires an agency or person to inform prospective adoptive parent(s) in the adoption services contract whether or not the agency or person will provide post-adoption services.

4. *Comment:* One commenter requests that all references to ''expenses'' be removed from § 96.40(b)(1)–(7). The commenter states that it is very difficult to predict the actual expenses of an individual intercountry adoption because there are so many unknown variables. It suggests that fees be based on the average cost of an adoption in a particular Convention country, rather than expenses. Several other commenters are concerned that the regulations preclude them from providing fee estimates for the overall cost of the intercountry adoption process.

Response: The Department agrees that it can be difficult to know the exact cost of each service that is required to complete an individual intercountry adoption. The regulations do not preclude an agency or person from providing a fee estimate for the total, overall cost of the intercountry adoption process. The standards do provide, however, that the total fee charged must include a breakdown, by specified categories, of how the overall fee is used. The Department has devised a standard that requires agencies and persons to categorize the fees and expenses an agency or person expects to charge in a uniform format. The fee categories an agency or person must use are in § 96.40(b) and (c). The rule does not require an agency or person to itemize every specific charge for each listed category. To reinforce this point, the Department is modifying the rule to refer to ''expected total fees'' and ''estimated expenses,'' as appropriate, throughout § 96.40.

5. *Comment:* One commenter requests that the rule clearly state that estimated contributions should be a fixed dollar amount or range, not a percentage, unless required by the country of origin.

Response: The Department has changed the provision to state that an agency or person must disclose ''any

fixed contribution amount or percentage,'' because it intends this provision to cover circumstances where the law of the country of origin may require the contribution to be determined by a percentage as well as circumstances where the contribution is based on a fixed dollar amount. We recognize that this is not the preference of the commenter, but believe the approach taken is consistent with the IAA, the Convention, and current practices.

6. *Comment:* Commenters request clarification regarding § 96.40 and the refund of fees paid for services not rendered. Commenters are concerned that agencies or persons may decide to classify all fees as nonrefundable. They believe that all fees should be refunded if the adoption is terminated due to agency problems, and if there is no fault on the part of the prospective adoptive parent(s).

Response: An agency or person incurs administrative and other expenses even if a child is not ultimately placed with prospective adoptive parent(s). Therefore, the Department is not modifying the rule to prohibit a portion of fees from being nonrefundable. The Department believes that § 96.40(a)'s requirement that agencies and persons disclose up front conditions under which their fees or expenses may be refundable or nonrefundable will allow prospective adoptive parent(s) to make informed choices about which agency or person they want to assist them with a Convention adoption.

7. *Comment:* A commenter thinks that requiring the disclosure of special service fees creates an obligation for an agency or person to specifically identify if the fee is used to support other purposes of the organization, such as cultural programs or scholarships. The commenter believes that, while it is reasonable to disclose this information, it is not practical for an agency or person to account for the use of such funds on a case-by-case basis.

Response: The Department believes that it is important to disclose the practice of using a portion of fees to fund special services such as cultural programs for adoptees and their families, but recognizes that it may be impractical to require an agency or person to account for the use of such funds on an individual basis. Accordingly, we have changed the standard at § 96.40(e) (which appeared as § 96.40(d) in the proposed rule) to require, where applicable, ''a general description of the programs supported by such funds.''

8. *Comment:* Commenters support the standard at § 96.40(f) (which appeared as § 96.40(e) in the proposed rule) that agencies and persons provide prospective adoptive parent(s) the option to transfer funds overseas to minimize direct cash payments when possible. One commenter would like ''minimized'' to have a clearer definition in this context and would like a maximum amount specified for direct cash transactions. Another commenter points out that many countries of origin do not have monetary systems that allow direct fund transfers, and that some foreign agencies will not accept electronic transfers.

Response: The Department has not modified § 96.40(f) on the transfer of funds. The Department is aware that many of the fees charged by public authorities in Convention countries—for example, for passports, birth certificates, adoption certificates, or court documents—must be paid in cash. For this reason, the standard does not mandate that agencies and persons must only use electronic fund transfers for all transactions or that prospective adoptive parent(s) should not expect to use any cash in the Convention country. Instead, the regulations require agencies and persons to use available methods so that the need for direct cash transactions by prospective adoptive parent(s) is minimized. It would not be practicable to set a maximum amount for such transactions, given the variances between Convention countries.

9. *Comment:* A commenter is concerned about the standard in § 96.40(g) (which appeared as § 96.40(f) in the proposed rule), allowing agencies or persons to expend up to $800 in additional, undisclosed fees and expenses, without specific consent of the prospective adoptive parent(s). As well, the commenter suggests that the standard should restrict the number of times an agency or person can obtain consent to expend funds in excess of $800 on unforeseen additional fees and expenses, even if the prospective adoptive parent(s) have waived the notice and consent requirement for such expenditures in advance. Two commenters suggest that the standard may be inconsistent with the IAA requirement that agencies and persons disclose fully all fees charged. They believe the standard should require all fees to be disclosed in advance, with no last minute fee increases.

Response: The Department shares the commenters concerns about charging large, last minute fees that were not disclosed to the clients in advance. Nevertheless, it is not unusual in an intercountry adoption for unexpected expenses to arise in the country of origin. It would be unreasonable to require agencies and persons to absorb the costs of all unforeseen expenses that may arise in all Convention adoptions. Therefore, the regulations attempt to strike a balance between protecting prospective adoptive parent(s) from large, undisclosed fees and allowing agencies and persons some flexibility to handle unforeseen circumstances that may arise in their Convention adoption cases.

Thus, the final rule requires that, to charge fees or expenses that were not disclosed in the written adoption services contract, an agency or person must obtain the consent of the prospective adoptive parent(s) prior to expending any funds in excess of $1,000 (increased from $800 in the proposed rule) for which the agency or person will hold the prospective adoptive parent(s) responsible, or give the prospective adoptive parent(s) the opportunity to waive the notice and consent requirement in advance. The Department is satisfied that this approach is not inconsistent with the IAA. The amount requiring either notice and consent or advance waiver was increased from $800 to $1000, to provide flexibility, and minimize the burden of seeking consents.

10. *Comment:* Commenters feel that agencies and persons should provide receipts for domestic fees and expenses only, and should not be expected to provide receipts for fees and expenses paid in the Convention country as proposed in § 96.40(f)(3) of the proposed rule, which is now § 96.40(g)(3). A commenter recommends that written receipts should be provided for fees and expenses collected directly by the agency or person. One commenter supports the regulation requiring agencies and persons to provide receipts so that all funds can be accounted for. The commenter is concerned that agencies and persons will decide to have money paid directly to hired contractors to avoid giving receipts.

Response: The final rule requires that agencies and persons provide receipts for unforeseen Convention country fees and expenses, because otherwise agencies and persons would not have to account at all to their clients for these expenses. The Department has changed the standard in § 96.40(g)(3), however, so that an agency or person is only required to provide written receipts for unforeseen additional fees and expenses incurred in the Convention country that were ''paid directly by the agency or person'' in the Convention country. As discussed previously, the Department has also added new § 96.40(c)(1), which requires agencies and persons to disclose fees and estimated expenses for

services provided by a third party that will be paid directly by the prospective adoptive parent(s). The Department also notes that §§ 96.45(b)(6) and 96.46(b)(8) require that a primary provider require that its supervised providers provide clients with an itemized bill of all fees and expenses to be paid, if the supervised providers bill the clients directly.

11. *Comment:* Commenters request that the word ''prospective'' be removed from § 96.40(g) (which appeared as § 96.40(f) in the proposed rule). Commenters believe that adoptive parent(s) are no longer prospective at this stage in the adoption process. Others request that the regulations remain as written.

Response: Section 96.40(g) addresses, in part, unforeseen fees that may occur before an adoption is finalized, either in the Convention country or in the United States. Therefore, the Department believes that the use of the phrase ''prospective'' adoptive parent(s) is appropriate.

12. *Comment:* A commenter thinks that § 96.40(g) of the proposed rule, which required an accounting of ''fees and expenses incurred within thirty days of completion of delivery of the services'' requires agencies and persons to reiterate detailed information about fees that has already been provided. The commenter believes it is unclear whether this rule is asking an agency or person to substantiate the fees that were charged for services rendered. It also thinks that § 96.40(g) of the proposed rule, requiring an accounting, should be removed or that the deadline should be extended from thirty to sixty days.

Response: The Department agrees that requiring an accounting is redundant and, therefore, has deleted § 96.40(g) of the proposed rule from the final rule. In further response to this comment, we have extended the time frame for agencies and persons to refund fees, which appears in § 96.40(h), from thirty days to sixty days to minimize the burden arising from this standard.

Responding to Complaints and Records and Reports Management

Section 96.41—Procedures for Responding to Complaints and Improving Service Delivery

1. *Comment:* Several commenters are concerned that the regulations leave agencies and persons vulnerable to complaints about activities outside the scope of their work. To safeguard agencies and persons from such complaints, one commenter suggests this section be changed to require that the complaint be related to the IAA.

Response: The Department has not changed the language from the proposed regulation as requested. Section 96.41(b) makes clear that only complaints that raise an issue of compliance by the agency or person with the Convention, the IAA, or the regulations implementing the IAA are within the scope of the standard. This broader scope encompassing the Convention and these regulations, as well as the IAA, is appropriate. The Department has changed § 96.41(b) so that the description of the type of complaints an agency or person must accept mirrors the description of the type of complaints that the accrediting entities will process, in § 96.68. See also the response to comment 1 in § 96.69.

In addition, § 96.41 has also been revised to clarify that references to complaints in other paragraphs of § 96.41 refer back to complaints filed pursuant to § 96.41(b).

2. *Comment:* Several commenters would like ''post-adoptive parent'' added to the list of those qualified to lodge a complaint. They believe that otherwise the provision could exclude the many parents who waited until their adoptions were complete before making complaints to the appropriate authorities.

Response: We have changed § 96.41(b) to refer also to adoptive parents.

3. *Comment:* Several commenters would like the regulations to clarify what constitutes a complaint, so that the number of frivolous complaints will be limited. They recommend that the term ''complaint'' be defined. Several commenters suggest that a complaint be defined as a written document, which is signed, and which addresses a specific aspect of a service that is under the control of the agency or person and governed by the regulations. One commenter further requests the section be amended to reflect that anonymous complaints may not be filed. Another commenter would like to see the regulations protect the confidentiality of those who make complaints.

Response: We understand that agencies and persons are concerned about being held accountable for problems that are not within their control. Section 96.41(b) details the components of complaints that an agency or person will be held accountable for addressing, stating that such complaints must be dated and signed by a birthparent, a prospective adoptive parent, an adoptive parent, or an adoptee. Furthermore, the complaint must refer to services or activities of the agency or person (including its use of a supervised provider) that the complainant believes raise an issue of compliance with the Convention, the IAA, and/or the regulations implementing the IAA. We have also changed § 96.41 to make clear that the obligations set forth in this standard (with respect to the processing, recording and reporting of complaints) relate only to those complaints that are received pursuant to § 96.41(b). Therefore, we do not believe it is necessary to add a definition of ''complaint'' to the rule.

4. *Comment:* Some commenters are concerned that agencies might disregard § 96.41's standard forbidding retaliatory action against those who file complaints. Several commenters recommend that the Department add provisions for severe penalties to be assessed against any agency violating the prohibition on retaliation. Other commenters think that the regulation forbidding retaliatory action is adequate as written.

Response: We concur with those commenters who find § 96.41(e) adequate. If an agency or person disregards the prohibition against retaliatory action, complainants have the option of filing a complaint with the Complaint Registry, for referral of the alleged misconduct to the accrediting entity. The accrediting entity may take adverse action as necessary. To further add to the protection of individuals who complain against an agency or person, however, we have made a minor change to § 96.41(e) so that it explicitly prohibits an agency or person from retaliating against an individual for providing information to an accrediting entity on the agency's or person's performance. See also the response to comment 3 in § 96.69.

5. *Comment:* Two commenters are concerned that requiring agencies and persons to summarize complaints and corrective actions on a quarterly basis places too heavy a burden on agencies. They recommend the Department eliminate that requirement. One of the commenters believes semi-annual or annual reporting would be more appropriate.

Response: Because of its value as an oversight tool, we are keeping the requirement that agencies and persons must provide a summary of complaints to the accrediting entity and the Department, but we have amended the regulation to require semi-annual reporting rather than quarterly reporting.

6. *Comment:* Many commenters suggest that individuals should be able to file complaints directly with the Complaint Registry, not just with the adoption agency or person. Other commenters believe complainants

should try to resolve issues through the complaint process of an agency or person before filing with the Complaint Registry.

Response: With the limited exception of complaints brought by individuals who are not party to the specific Convention case, we have not accepted the recommendation to allow complainants to file complaints directly with the Complaint Registry. An individual who is a party to a specific Convention adoption case must lodge any complaint relating to that case first with the agency or person providing adoption services, if a U.S. provider, and the primary provider, if different, in order to give the agency or person an opportunity to resolve the issue. For a discussion of the complaint process, please see the responses to comments 2, 3, and 4 in § 96.69.

7. *Comment:* One commenter wonders if there should be a deadline after an adoption has taken place for adoptive parents to file a complaint about adoption services.

Response: Although we want to encourage complainants to address issues in a timely manner, we are reluctant to place an arbitrary time limit on complaints in these regulations, which regulate the accreditation and approval of agencies and persons. We have not changed the proposed rule in response to this request.

8. *Comment:* Several commenters would like to ensure the complaint process is transparent to the public. One commenter says that an agency or person should be required to post on its website the periodic reports summarizing complaints that they send to the accrediting entity. One commenter requests that the regulations include a provision stating that adoption agencies and persons must disclose, pre-referral, any complaints that have been directed against the agency or person.

Response: The Department believes that the rule's provisions on complaint resolution provide adequate transparency with respect to complaints, and is not making any change in response to these comments. If a complainant is dissatisfied with the resolution of a complaint by an agency or person, the complainant may file a complaint with the relevant accrediting entity through the Complaint Registry, as described in subpart J. Once the Convention is in force, the information dissemination requirements of subpart M will require disclosure to the public of information related to substantiated complaints and thereby keep the public adequately informed about complaints against agencies and persons.

9. *Comment:* One commenter would like the regulations to include a provision requiring agencies to educate prospective adoptive parent(s) about the complaint process. Another commenter suggests an independent entity should be created to educate adoption clients and monitor complaint trends.

Response: The regulation requires agencies and persons to provide their clients information regarding the complaint process, including contact information for the Complaint Registry, at the time the adoption contract is signed. Also, we have added to § 96.41(b) a requirement that the agency or person advise complainants of procedures available to them if they are dissatisfied with the agency's or person's response to their complaint (which may include any internal appeals process, or information on filing complaints with the Complaint Registry). We feel that the standard requires adequate notice to prospective adoptive parent(s) about complaint procedures. We are hopeful that information about the Complaint Registry will be disseminated widely, through various channels (including the Department's Web site, accrediting entities' Web sites, advocacy groups, adoption support groups, and adoption Web sites) so that the notice provided by the agency or person will reinforce information already publicly available to prospective adoptive parent(s).

10. *Comment:* A commenter recommends that the Department add a standard providing that ''where the agency or person is acting as the primary provider, the procedures specified in § 96.41(a) through (h) [concerning responding to complaints and improving services delivery] include any and all complaint(s) relating to both the primary provider and to any and all supervised provider(s).''

Response: We find the change unnecessary. A complaint that a primary provider using supervised providers had not ensured that adoption services were provided consistent with the IAA and these regulations is included within the types of complaints that may be filed with the agency or person under § 96.41(b), or with the accrediting entity via the Complaint Registry pursuant to subpart J. In addition, § 96.45(b)(2) requires primary providers to ensure that their domestic supervised providers comply with § 96.41(b) through (e).

11. *Comment:* One commenter requests that birth parents be made aware of how to pursue complaints.

Response: Please see the response to comment 5 on § 96.36, above, which addresses this comment.

Section 96.42—Retention, Preservation, and Disclosure of Adoption Records

1. *Comment:* Some commenters believe that § 96.42(a) should specify a uniform Federal time frame for the retention of adoption records. Several commenters object to the use of individual State laws to govern the retention of adoption records. Several other commenters request that adoption records be retained permanently because future children and relatives—in addition to the adoptee—have an interest in the adoption records. Other commenters suggest a minimum retention period range from 75 to 100 years.

Response: In the proposed rule, the Department deferred entirely to State law in the standard for retention of adoption records. Section 401(a) of the IAA focuses on the preservation of Convention records. (See the final rule for part 98 of Title 22 of the CFR published today in the **Federal Register**.) Convention records are those records in custody of DHS and the Department. The Department wants to stress that adoption records are different from Convention records. Adoption records are records that are received or maintained by agencies, persons, or domestic public authorities. The IAA is silent on whether or not there should be an accreditation standard on retention of adoption records.

We understand the concerns regarding deference to State laws, as State retention requirements on preservation of records may vary. Section 96.42(a) of the final rule, nevertheless, continues to set a standard that requires that agencies and persons preserve adoption records for as long as State law requires. Consistency with State law enhances agencies' and persons' ability to comply with these regulations and minimizes the burden of storing records for periods beyond what is already required under State law.

2. *Comment:* Some commenters would like to see a Federal agency, not agencies or persons, retain adoption records because agencies or persons may cease operations and records may be lost. Some commenters request that adoption records in the custody of agencies and persons be accessible through FOIA. Other commenters suggest that adoption records should be retained in a national archive. Another commenter believes that adoption records for adoptions finalized in a Convention country should be accessible through FOIA.

Response: We are not making any change to § 96.42 in response to these comments. Section 401(c) of the IAA mandates that applicable State law continue to govern disclosure, access, and penalties for unlawful disclosure of adoption records. By making the Department or some other Federal agency custodian of adoption records, we would be federalizing a function that Congress determined in section 401 of the IAA to be better regulated at the State level. In addition, attempting to establish a Federal records depository for non-Federal records would raise a host of legal, management, and funding issues. Finally, the Department does not have the authority to require countries of origin to retain adoption records. The laws of the country of origin govern access to and preservation of records that are maintained by its public foreign authorities.

3. *Comment:* A commenter requests that the proposed regulations specify, with a strict definition, which adoption records must be retained.

Response: The definition of adoption record is found in § 96.2. It includes, but is not limited to, ''photographs, videos, correspondence, personal effects, medical and social information and any other information about the child'' received or maintained by agencies and persons or public domestic authorities. The definition includes a range of types of materials to make it clear that agencies and persons must retain all information about the child that comes into their custody. We do not believe that the definition of an ''adoption record'' must be changed.

4. *Comment:* One commenter requests that the regulations outline strict enforceable regulations on the physical maintenance, storage, and retention of adoption records based on established and professional archival standards.

Response: We have changed § 96.42(a) to state that the agency or person must retain or archive adoption records in a safe, secure, and retrievable manner.

5. *Comment:* Several commenters request that the regulations clarify that the State law that applies to adoption records is the law of the State in which the agency or person is physically located.

Response: We have not made this change because, in providing that ''applicable State law'' will govern disclosure of, access to, and penalties for unlawful disclosure of adoption records, IAA section 401(c) is silent on which State's law is ''applicable.'' State conflicts-of-laws rules thus would determine which State law is applicable, if the question should arise.

6. *Comment:* One commenter requests the establishment of an international registry that requires both the adoptee and birth parents to consent to release of records before adoption records may be disclosed.

Response: We decline to make any change in response to this comment, which is beyond the scope of these accreditation/approval regulations. Section 401(c) of the IAA makes it clear that access to adoption records in the United States will be governed by applicable State law.

7. *Comment:* Several commenters express concern about the access that adopted persons and their families will have to their adoption records. They would like the regulations to make adoption records available to adopted persons and their families at minimal or no cost. One commenter adds that agencies and persons should be required to respond to record requests in a timely fashion. It requests that the regulations clarify which information can be given to the adopted person or family, when it can be given, and how it must be requested. It further requests regulations regarding access to records generated in countries of origin.

Response: We are making no change in response to these comments. Under section 401(c) of the IAA, access to adoption records is governed by State law, including State law on costs and timing of access to adoption records. Laws governing specific issues related to access to adoption records vary from State to State. Access to Convention records will be governed by applicable Federal law, including the FOIA and the Privacy Act.

8. *Comment:* Several commenters were confused about whether §§ 96.42(c) and (d) of the proposed rule, regarding disclosure of information and protection of privacy, were meant to preempt State laws on disclosure. Some commenters worried that these sections were creating a Federal law on access to information about adoptees' and birth parents' identities. Of those commenters, several were concerned that § 96.42(c) did not adequately protect the privacy of adoptees, birth parents, and prospective adoptive parent(s). Others were concerned that § 96.42(d) would inappropriately block access to adoption records.

Response: Section 96.42(c) in the proposed rule was not meant to preempt State laws regarding disclosure, privacy protection, or access to adoption records or other information. The proposed rule standard specifically referenced applicable State law. Likewise, § 96.42(d) in the proposed rule was not intended to change applicable State law on access to adoption records or to block access to adoption records by birth parents, adoptees, or adoptive parents otherwise permitted by State law.

To clarify and avoid confusion, however, we have deleted proposed §§ 96.42(c) and (d) from the final rule, with the exception of the requirement that the agency or person ''safeguards sensitive information,'' which is a standard required by IAA section 203(b)(1)(D)(iii). This standard has been relocated to § 96.42(c) of the final rule (§ 96.42(e) of the proposed rule). Agencies and persons must still comply with applicable State law on access to adoption records. Consistent with this, § 96.42(a) clearly defers to applicable State law as the basis for the standard for retaining and archiving adoption records.

Section 96.43—Case Tracking, Data Management, and Reporting

1. *Comment:* A commenter agrees with the principle of requiring reports by primary providers. The commenter also believes that requiring annual reports would be too costly and time consuming. It requests that these reports be submitted every two years instead.

Response: Section 104 of the IAA requires the Department to submit an annual detailed report including the data outlined in § 96.43 of this regulation. The information collected by the primary providers, and provided to the accrediting entity or Department, is used to fulfill the Department's responsibilities under the IAA. Therefore we have not changed the requirement for agencies and persons to report on the elements in § 96.43 on an annual basis.

2. *Comment:* One commenter suggests that agencies and persons be required to report on the ethnicity of the child and birth parents for cases involving children immigrating to the U.S. and those emigrating from the U.S.

Response: Section 104 of the IAA lists the required data to be collected and reported by the Department regarding Convention (and in some cases non-Convention) adoptions. The language of § 96.43 of these regulations generally mirrors the data requirements in the IAA. The IAA has no requirement to report the ethnicity of the child or the birth parents, and we are unconvinced of the need for such a requirement. In the interests of reducing reporting burdens on agencies and persons, we decline to insert such a requirement into these regulations.

3. *Comment:* A commenter suggests that, for every child emigrating from the United States, an agency or person be

required to provide a statement that the placement is being made in compliance with the Indian Child Welfare Act and either that the child is not a Native American or that the tribe has been notified and permission for an out-of-country placement has been received.

Response: There is already a requirement that agencies and persons comply with all applicable requirements of the Indian Child Welfare Act, in § 96.54 of these regulations. The accrediting entity will determine the documentation necessary to evaluate compliance with this standard. We have not specified that compliance with this particular standard will be established by a written statement; as with all of the standards, the accrediting entity will decide what documentation and information is necessary to measure compliance.

4. *Comment:* A commenter believes that information about disruptions and dissolutions should be tracked regardless of whether a child is subsequently placed with another family in another country or in the United States.

Response: We are making no change in response to this comment. Section 96.43 already requires an agency or person to provide information on disrupted adoptions regardless of whether a child is placed with another family. Agencies and persons are required to provide the same information on dissolved adoptions wherever possible. The Department has qualified the requirements for tracking information on dissolved adoptions with the phrase ''wherever possible'' because we recognize that agencies and persons may not be able easily to get information about what happens to a child after an adoption is completed.

5. *Comment:* A commenter believes a child's records should include the name of the individual(s) who performed the home study for the prospective adoptive parent(s).

Response: The IAA does not require the name of the individual who performed the home study to be included in a child's records, and the Department does not believe it is necessary to impose such a rule.

6. *Comment:* Two commenters believe agencies and persons should report if they have ever operated under a different name or if their principals have ever worked with different agencies or persons.

Response: Agencies and persons are required to provide information about operations under different names pursuant to §§ 96.32 and 96.35 of these regulations. Section 96.32(e) requires agencies and persons to disclose to the accrediting entity if directors, managers, or employees previously worked with other providers of adoption services. In addition, we have added to § 96.35(c)(5) a standard that agencies and persons must report if their individual officers, directors, or employees are known to have been or currently are carrying out activities that are inconsistent with the principles of the Convention. It is, therefore, unnecessary to have a similar reporting requirement in § 96.43.

Service Planning and Delivery

Section 96.44—Acting as Primary Provider

Section 96.45—Using Supervised Providers in the United States

Section 96.46—Using Providers in Convention Countries

1. *Comment:* Most commenters have strong reactions to the regulations governing the responsibilities of primary providers. Many commenters believe that requiring primary providers to assume responsibility for the actions of supervised providers—both U.S. and foreign—would prove to be unworkable. On the other hand, other commenters believe that making primary providers liable for the actions of supervised providers, if those actions were negligent, is essential to ensuring the protection of children, birth parents, and adoptive parents. Numerous commenters believe that the liability provisions in §§ 96.45 and 96.46 of the proposed rule should be stricken. Many of the commenters support the regulations as a framework for working with supervised providers, absent the liability provisions. Commenters state in particular that assigning liability to a single primary provider places an unmanageable financial burden on agencies and persons who serve as primary providers. Other commenters believe that small agencies and social workers who would serve as supervised providers will be forced out of practice because primary providers will be unwilling to accept legal responsibility for their work.

Several commenters recommend that, if the final regulations contain liability provisions, the Department should limit liability through caps on damages, limits on attorney fees, the imposition of a statute of limitations in Convention cases, and a realistic standard of proof for agencies in Convention cases. Other commenters recommend that the regulations provide for liability exemptions for primary providers who can demonstrate ''due diligence'' in the selection and oversight of their supervised providers. Many commenters assume that the liability provisions impose a strict liability scheme and exceed the statutory authority provided in the IAA. There are some commenters who support the liability provisions in the regulations, however. These commenters request that the section remain unchanged. Some commenters would like primary providers to be required to treat entities accredited by Convention countries as supervised providers.

Response: The Department has addressed, at section III, subsection B.4 of the preamble, above, these comments and its decision to remove the provisions of the proposed rule that required the primary provider to retain legal responsibility for the adoption services provided by, and assume liability for, its supervised providers. Consistent with that discussion, the Department has deleted proposed rule provisions §§ 96.45(b)(8), 96.45(c), 96.45(d), 96.46(b)(9), 96.46(c), and 96.46(d). The regulations as now revised are in no way intended to allocate the risk of tort liability between a primary provider and a supervised provider. Instead, they focus on the primary provider's responsibility, in the accreditation/approval context, for the actions of its supervised providers to the extent that such actions reveal the primary provider's non-compliance with a specific standard under §§ 96.45 or 96.46 (a) or (b).

As explained above, at section III, subsection B.4 of the preamble, although we have removed the provisions requiring primary providers to assume legal responsibility for the actions of their supervised providers, we have expanded the types of providers that primary providers must supervise. The Department has revised § 96.14 to require a U.S. accredited agency or approved person acting as a primary provider to treat other U.S. accredited agencies and approved persons providing services on the case in the United States as supervised providers (§ 96.14(b)(1)), and to treat foreign entities accredited by a Convention country as supervised providers (§ 96.14(c)(2)) unless they are performing a service qualifying for verification under § 96.46(c). The Department believes that holding primary providers responsible through the accreditation/approval process for accredited providers assisting with a case will provide an incentive to the primary partner to choose any provider partner carefully, offsetting the deletion of the requirement allocating legal responsibility for the conduct of supervised providers to the primary provider.

In addition, the Department has added language to § 96.46(a)(5) that requires a primary provider to ensure that a foreign supervised provider is accredited in the Convention country in which it operates, if accreditation is required by the laws of that Convention country to perform the adoption services the foreign supervised provider is providing.

As explained in section III, subsection A above, § 96.46(c) now recognizes that contemporaneous supervision by a U.S. accredited agency or approved person will generally not be possible with respect to a limited number of services performed in Convention countries—obtaining consents and preparing child background studies in incoming cases (child immigrating to the United States), and preparing home studies in outgoing cases (child emigrating from the United States)—and accordingly allows the U.S. primary provider the option of verifying after the fact that such services were obtained in accordance with applicable foreign law and the Convention. At a minimum, such steps will require review of the relevant reports and documentation to ascertain that applicable requirements have been satisfied. Section 96.44 has also been revised to conform to this change in § 96.46.

Overall, the modifications that the Department has made to the regulations do not change the basic framework that was set up in the proposed rule. Agencies and persons acting as primary providers will continue to be responsible for monitoring the compliance of supervised providers and the accreditation and approval process will serve as a check on this responsibility. Primary providers will not, however, be required by these regulations to assume legal responsibility for the acts of their supervised providers. The Department believes this structure will promote compliance with the Convention, the IAA, and these regulations, without making it prohibitively difficult for accredited agencies and approved persons to work with other agencies and persons in the United States or with providers in Convention countries.

2. *Comment:* Several commenters maintain that the indemnification provisions outlined in §§ 96.45(d) and 96.46(d) do little to protect the primary provider. Some commenters state that the primary provider could be out of business before it has the chance to seek indemnification against the supervised providers. Commenters also contend that many supervised providers would not have the resources to fulfill the indemnification obligation.

Response: As explained above, the Department has removed the requirements that primary providers assume legal responsibility for the actions of the supervised providers operating under their supervision. Therefore, the regulations' indemnification standards are no longer necessary, and the Department has deleted §§ 96.45(d) and 96.46(d).

3. *Comment:* Several commenters point out that prospective adoptive parent(s) decide which agencies and persons to use for certain adoption services. For instance, prospective adoptive families often complete a home study before they even approach an agency. Commenters request that the supervision provisions be modified to reflect such situations.

Response: The Department understands the concern about providers selected by prospective adoptive parent(s). Under this rule, however, an accredited agency, temporarily accredited agency, or approved person will have to be identified and act as the primary provider in each Convention case. This primary provider, as identified under § 96.14, is responsible for the provision of adoption services in the case as provided in § 96.44. Providers who do not comply with this framework will not be able to provide services to prospective adoptive parent(s).

With respect to prospective adoptive parent(s) in the United States who have a home study completed before choosing a primary provider, if the home study was prepared by an exempted provider, the primary provider will be required to ensure that the home study is approved consistent with § 96.47(c). The same is true with regard to exempted providers performing child background studies.

With respect to child background and home studies prepared in Convention countries, §§ 96.44 and 96.46(c) will allow the U.S. primary provider to verify the performance of the service, as discussed above at section III, subsection A, and in response to comment one above.

4. *Comment:* Two commenters point out that the term ''supervised'' has ramifications for agencies and persons because of the distinctions made by the Internal Revenue Code between employees and independent contractors. The commenters request that this differentiation be reflected in the final regulations. The commenters also request that the regulations clarify that they do not prevent an agency or person from employing an independent contractor.

Response: The Department does not intend the use of the IAA term ''supervised'' to determine the treatment of any individual or entity under the U.S. Internal Revenue Code. Supervised providers may be independent contractors. For Convention and IAA purposes only, a supervised provider is an agency or person that is providing adoption services under the supervision and responsibility of an accredited agency, temporarily accredited agency, or approved person that is acting as the primary provider in the Convention case. The term ''supervised provider'' is too deeply embedded in these regulations to warrant devising a different term to avoid a misperception that the term has any implications for tax purposes.

5. *Comment:* A commenter recommends that the regulations require primary providers to be directly responsible for all fee issues.

Response: The Department appreciates the concern that some supervised providers will charge additional and undisclosed fees to prospective adoptive parent(s) when working directly with the prospective adoptive parent(s). The regulations, as written, should help to control this problem, because the standards in both § 96.45 and § 96.46 impose specific requirements for fee-related provisions that must appear in the written agreement between the primary and supervised provider. Section 96.46(b)(8), for example, requires that the written agreement between the primary provider and the foreign supervised provider specify that, if the foreign supervised provider is billing the client(s) directly for their services, it must give the client(s) an itemized bill of all fees and expenses to be paid, with a written explanation of how and when such fees and expenses will be refunded if the service is not completed, and must make any refunds within sixty days of the completion of delivery of services.

6. *Comment:* Several commenters were concerned about the practices of some foreign providers who work with birth parents in the country of origin.

Response: Protecting the rights of birth parents to consent to an adoption is an important principle of the Convention. The primary responsibility for ensuring that consents have been obtained in compliance with the Convention is on the country of origin, however, not on the receiving country. The standards in § 96.46 require primary providers to supervise the actions of their foreign supervised providers, including by requiring the foreign supervised provider to adhere to the standard in § 96.36(a) prohibiting

child buying, or, if the consents were not obtained by a foreign supervised provider, by verifying that consents obtained by any other foreign non-governmental provider have been obtained in accordance with the Convention and applicable foreign law. We do not have authority, however, to regulate foreign providers directly, and there are limits to how much we can control the consent process abroad consistent with the framework of the Convention. We believe the approach taken in the regulations strikes the correct balance.

Standards for Cases in Which a Child Is Immigrating to the United States (Incoming Cases)

Section 96.47—Preparation of Home Studies in Incoming Cases

1. *Comment:* One commenter requests that the regulations permit only accredited agencies or approved persons to conduct home studies.

Response: Section 201(b) of the IAA specifically allows non-accredited agencies and non-approved persons, known as exempted providers, to conduct home studies, as well as child background studies, in the United States, without being supervised. Exempted providers may prepare home studies and child background studies without being accredited, approved, or supervised as long as they are not currently providing, and have not previously provided, any non-exempt adoption services in the case. Home studies and child background studies conducted by exempted providers must be reviewed and approved by an accredited agency or temporarily accredited agency, however. Because the IAA provides clear guidance on this issue, and our regulations are consistent with the IAA, no change to the regulation is appropriate.

2. *Comment:* One commenter would like the regulations to eliminate the need for prospective adoptive parent(s) to disclose misdemeanors that are over ten years old and that do not involve abuse. Another commenter requests that the regulations state the length of time for which a home study will be valid as well as describe the renewal process for a home study. One commenter recommends that the regulations allow any home study preparer to prepare a second home study for the competent authority in the child's country of origin that is different from the home study sent to DHS. The commenter notes that certain disclosures, like medical conditions or disabilities, can put prospective adoptive parent(s) at risk of rejection in a particular country or origin. A commenter believes that deliberate omissions of unfavorable information on a home study should be grounds for denial of accreditation or approval.

Response: Although we understand the concerns of the commenters regarding the content of home studies, we do not have the authority to make the suggested changes in these regulations. The Department has authority over the accreditation and approval of agencies and persons. DHS retains the authority to determine the content of a home study for Convention and non-Convention cases. We cannot remove requirements, such as the required disclosures of misdemeanors, from DHS regulations through these regulations.

These accreditation and approval regulations do not address the length of time that a home study is valid. The length of time that a home study remains valid is set by DHS. Therefore, we reference DHS' regulations, 8 CFR 204.3(e), which lay out the current requirements for a home study in intercountry adoptions. The home study requirements for intercountry adoptions can be found on the Web site of DHS's U.S. Citizen and Immigration Services, at *http://www.uscis.gov.*

As for the issue of preparing two home studies—one for the DHS process and one for the country of origin—under § 96.47(d) the preparation of two different home studies is not permitted. The United States will base its Convention Article 5(a) determination about the suitability of the prospective adoptive parent(s) in reliance on a home study. We believe it would be inappropriate for the United States to support a process whereby the receiving country would make that determination based upon one home study and then have the country of origin's decision based upon a different home study.

3. *Comment:* A commenter is concerned about the disclosure of criminal history information to individuals not currently authorized under State law to conduct criminal background checks for home studies. It requests clarification that only individuals authorized under State law can conduct criminal history background reviews.

Response: Sections 96.47(b) and 96.47(c)(1) require that home studies must be performed in accordance with 8 CFR 204.3(e) and applicable State law. Therefore, only individuals authorized under State law may conduct criminal history background reviews for a home study. See comment 9 on § 96.35, for further discussion of this issue.

4. *Comment:* One commenter believes that the Interstate Compact on the Placement of Children (ICPC) needs to be addressed in the regulations concerning home studies.

Response: We have chosen not to add compliance with the ICPC as a specific standard. To the extent ICPC requirements relevant to intercountry adoptions are incorporated into applicable State law, agencies and persons will be required to comply with them.

Section 96.48—Preparation and Training of Prospective Adoptive Parent(s) in Incoming Cases

1. *Comment:* One commenter states that the regulations should clarify that only agencies or persons—not prospective adoptive families—have the authority to decide whether prospective adoptive parent(s) should be available for the exemption from training outlined in § 96.48(g). Another commenter supports the ability of parents who have adopted before to ''opt-out'' of the training. Other commenters believe that families should not be exempted from all the training.

Response: We have changed the language of § 96.48(g) to clarify that it is the agency or person that determines whether prospective adoptive families can be exempted from the training. We expect agencies and persons to comply with § 96.48(g) and to evaluate prospective adoptive parent(s) to assess whether they have received adequate prior training or have prior experience as parent(s) of children adopted from abroad.

2. *Comment:* Many commenters express support for mandatory training for prospective adoptive parent(s), including the variety of training methods that are provided for by the regulations. One commenter recommends a minimum of twenty hours of pre-adoptive training for adoptive families. Other commenters believe pre-adoption training for prospective adoptive families should be voluntary. They are concerned about any additional costs or burdens to prospective adoptive parent(s). Some commenters recommend that training of prospective adoptive families should be interactive and not rely solely on videos, computers, or other distance learning methods. Another commenter suggests that the Department require prospective adoptive parent(s) to participate in ''adoption playgroups,'' so that prospective adoptive parent(s) and adoptive parents can educate each other and benefit from each other's experience. One commenter suggests that the regulations require agencies and

persons to conduct at least half of the training in person. Another commenter requests that the regulations require an independent licensed social worker to conduct the training.

Response: The IAA requires standards for an agency or person to provide a training program to prospective adoptive parent(s). We believe that Section 96.48(a)'s standard, that agencies and persons provide at least 10 hours of training to prospective adoptive parent(s), is appropriate and decline to change the hour requirement. Agencies and persons can exempt parents only as provided in § 96.48(g).

The standards in § 96.48(d) give agencies and persons latitude to design training sessions and materials based on the needs of the prospective adoptive family. We are not persuaded that we should restrict their flexibility in this regard or by requiring that only an independent licensed social worker be permitted to conduct the training. Finally, the IAA does not authorize the Department to require prospective adoptive parent(s) to participate in play groups, or other adoption support groups.

3. *Comment:* Several commenters remark that mandatory training places too heavy a financial and personnel burden on small agencies or persons. They suggest that the issues to be covered in the mandatory training be provided during the home study process. One commenter would like the agency or person who conducts the home study to determine how much additional training is necessary.

Response: Section 96.48(d)(5) specifically allows an extended home study process in cases where training cannot otherwise be provided. We decline to change the rules to make the home study preparer determine how many hours of additional training is necessary. Within the basic limits set in the regulations (ten hours), we want to give agencies and persons the discretion to make the necessary determinations about the training needs of prospective adoptive parent(s).

4. *Comment:* Commenters' suggestions for additions to the required adoptive families training curriculum include information about racial identity issues, general parenting skills, child development, the potential for children to have or develop mental illnesses, the risk that children may have a communicable disease, and legal recourse for parents after adoption. One commenter is concerned that the curriculum will ''scare'' families away from adoption. Two commenters believe that the curriculum needs to be tailored for each prospective adoptive family. One commenter requests that the term ''institutionalized children'' be replaced.

Response: We agree that the training curriculum needs to be tailored according to the needs of the prospective adoptive family. The additional suggested topics are generally already encompassed by the broad list of topics that training should address in § 96.48(b). We have added some additional items that should be included in the training required under § 96.48(c), however, to ensure that the prospective adoptive parent(s) are as fully prepared as possible for the adoption of a particular child. Section 96.48(c)(3) now requires parents to be counseled on any ''medical, social, background, birth history, educational data, developmental history, or any other data known about the particular child.''

We believe the need to ensure that families be adequately prepared for an adoption outweighs any concern that the curriculum will discourage families from adopting. Finally, while the term ''institutionalized children'' may carry a negative connotation, it is used in this context to encompass the broad array of childcare centers, programs, and institutions, such as orphanages, that are typically used by countries of origin, not to suggest involuntary commitment to a mental health or other facility. We decline to change the term, because we believe it is appropriate in this context to ensure that training is inclusive of issues related to children in a wide variety of centers, programs, and institutions.

5. *Comment:* Several commenters suggest that agencies or persons should be required to provide post-adoption training and counseling.

Response: Section 203(b)(1)(A)(iii) of the IAA requires standards under which agencies and persons provide training programs to prospective adoptive parent(s) before the parents travel to adopt the child or before the child is placed with the parents. While we agree that post-adoption training and counseling may also be very helpful for some parents, post-adoption services are not services that are regulated under the IAA. Thus we are not making changes in response to these comments.

6. *Comment:* Two commenters would like the regulations to require agencies or persons to offer training to birth parents in countries of origin as well as to prospective adoptive families.

Response: Neither the IAA nor the Convention requires a receiving country to provide training to birth parents residing in a Convention country. Under Article 4(c)(1) of the Convention, the country of origin is required to ensure that counseling is provided to the birth parents. When the child is emigrating from the United States, we require agencies and persons in § 96.53 to counsel birth parents about the effects of their consent to an adoption. We certainly encourage agencies and persons to undertake voluntarily the task of providing needed services to birth families in other countries of origin, if they are permitted to do so by the country of origin. We do not believe it would be appropriate to address such services in these regulations, however.

Section 96.49—Provision of Medical and Social Information in Incoming Cases

1. *Comment:* Many commenters maintain that the regulations require far more medical information to be provided than can be reasonably obtained. The commenters are concerned with overburdening and harassing foreign orphanages and doctors to the point where they will refuse to provide the medical information. They also worry that requesting too much information will cause delays in the adoption process. Commenters suggest that agencies and persons be required to use ''reasonable efforts'' to obtain medical information on a child. Many other commenters, however, request that the regulations force agencies and persons to provide comprehensive medical information. They maintain that access to accurate and comprehensive information about the child is essential for prospective adoptive parent(s). These commenters ask for stringent standards regarding medical and social information in incoming cases. Still other commenters believe that the regulations as written strike an appropriate balance between the two concerns.

Response: The Department has retained the basic structure of § 96.49, but made a number of changes to specific provisions in response to these comments. The Department recognizes that the provision of accurate medical records on the child is one of the most important issues facing prospective adoptive parent(s), adoptive parents, and adoptees, but an agency or person is generally dependent upon the country of origin to provide such information. It has tried to balance the need for detailed and accurate medical information about a particular child with the practical difficulties inherent in obtaining such information in many foreign countries. The Department has supplemented the IAA-mandated timeframes for the provision of medical records by adding to the standard in

§ 96.49(a) that such records be provided to prospective adoptive parent(s) as soon as possible. We have also revised and reorganized §§ 96.49(a) and (b) to clarify that those translations of medical records it is practicable to provide must be provided within the IAA-mandated timeframes.

The Department has maintained the requirements, in paragraphs (d) and (f), that agencies and persons use reasonable efforts to provide the required information. We have added, to § 96.49(d)(2), a provision that agencies and persons must try to obtain information on any special needs of the child. The Department has also added a standard to paragraph (g) calling for agencies and persons to continue to use reasonable efforts until the adoption is finalized to secure those medical or social records that could not be obtained previously.

Overall, the standard continues to reflect the Department's belief that it is critical that prospective adoptive parent(s) get as much medical information as possible, but also provides the flexibility necessary in light of the practical problems inherent in providing prospective adoptive parent(s) with medical records.

2. *Comment:* A commenter requests that the regulations more heavily emphasize providing birth family history. It requests that the following information on the child be included in the medical report: birth family bio-psychosocial history, growth data, prenatal history, development status at the time of referral, specific information on known health risks where the child resides, any known siblings, and the whereabouts of siblings. Another commenter requests that agencies and persons be responsible for administering basic testing for communicable diseases. Two commenters request that agencies and persons be required to use standardized medical health and social history forms.

Response: The Department has amended several provisions of § 96.49 to require more specific information on the child's birth history, if available. In particular, § 96.49(f)(1) now specifically requires reasonable efforts to obtain available information about the child's birth and prenatal history. The Department has added a new standard, § 96.49(f)(3), that requires reasonable efforts to obtain available information about any birth siblings, including their whereabouts, whose existence is known to the agency or person or its supervised provider. The Department has also revised § 96.49(d)(3) to require reasonable efforts to obtain available growth data, including prenatal and birth history, and developmental status over time and current developmental data at the time of the child's referral for adoption. Section 96.49(d)(4) continues to require reasonable efforts to obtain available specific information on the known health risks in the specific region or country where the child resides.

The regulations do not require agencies and persons to administer tests for communicable diseases. The Department believes that the correct role for agencies and persons, most of whom do not have staff with medical training, is to gather and forward as much medical and social information about the child as is reasonably possible, not to perform medical diagnostic tests themselves. Also, the Department is not requiring agencies and persons to use standardized health and social history forms. The governmental interest is in having agencies and persons get as much information about the child's medical and social history to the prospective adoptive parent(s) as possible, not in the format of the information.

3. *Comment:* Several commenters request that agencies and persons be granted the discretion to withdraw referrals of a child in less than a week if necessary in order to shorten the amount of time a child spends waiting to be adopted. They believe 48 to 72 hours is appropriate. Other commenters suggest a three-week review period, while others request establishing a two-week review period. In addition, several commenters request that the regulations be modified to more specifically lay out what ''extenuating circumstances'' would be appropriate exceptions to the one-week review period. Others request that the exception for ''extenuating circumstances'' be omitted.

Response: The Department has amended § 96.49(k) to require the accredited agency or approved person to give the prospective adoptive parent(s) at least two weeks, instead of one, to review the referral. In making this change, the Department is seeking to ensure that prospective adoptive parent(s) have enough time to make an informed, measured decision, using the specific medical and social history of the child they wish to adopt, that they are capable of properly caring for the child. We have retained the provision that permits the referral to be withdrawn earlier, however, to provide flexibility to agencies and persons in the rare cases in which there are extenuating circumstances involving the child's best interests.

4. *Comment:* A commenter requests the inclusion of language to allow for adoptions of children who have not been pre-identified in advance of travel.

Response: The language of § 96.49(a) reflects section 203(b)(1)(A)(i) of the IAA, which requires medical records to be given to the prospective adoptive parent(s) no later than two weeks before the adoption or two weeks before the date on which the prospective adoptive parent(s) travel to the Convention country to complete all procedures relating to the adoption, whichever is earlier. We think this requirement is best read to apply only once a child has been identified and matched with the prospective adoptive parent(s). Prior to that time, there is no specific ''adoption'' contemplated, and any travel cannot be to complete all procedures relating to a particular adoption. We do not believe this standard was intended or must be read to preclude adoptions of children who have not been pre-identified prior to travel, and we do not believe it is necessary to change § 96.40(a) or to add a new standard to address this issue. If the prospective adoptive parent(s) have not been matched with a child before arriving in the country of origin, then compliance with the standard in § 96.49 will require that medical information on the child be provided to the prospective adoptive parent(s) either as soon as possible after the child is identified, but no later than two weeks before the adoption or placement for adoption, or—if a second trip is needed to complete procedures relating to the adoption—no later than two weeks prior to that travel, whichever is earlier.

5. *Comment:* One commenter requests that agencies and persons provide a copy of the child's medical records to the prospective adoptive parent(s) at least three weeks in advance if the record is not a correct and complete English translation. Several commenters request that an untranslated copy of the prospective adoptive child's medical records be provided to the adoptive family in addition to the English versions.

Response: The Department has amended § 96.49(c) to require agencies or persons to provide any untranslated medical reports or videotapes or other reports to prospective adoptive parent(s). It continues to require accredited agencies and approved persons to provide an opportunity for the clients to arrange for their own translation of the records, including a translation into a language other than English, if needed.

6. *Comment:* Several commenters request that any information obtained on the prospective adoptive child be obtained in accordance with the

Convention country's laws and procedures.

Response: In Convention adoptions, the laws of both countries involved must be followed. These regulations will not supersede any applicable domestic laws of a Convention country on the collection of information about a prospective adoptive child, as § 96.49(i) relating to videotapes and photographs of the child reiterates. We believe this is sufficiently clear from the standards in their entirety that no specific change is required in response to these comments.

7. *Comment:* A commenter believes that it is unnecessary to require a non-medical individual to document his or her training and to indicate whether or not he or she relied on objective data or subjective perceptions in making a medical assessment.

Response: The Department believes that it will help the prospective adoptive parent(s) better understand the information they are given about a prospective adoptive child if they know both the training and background of any person who contributed observations on the child, as well as the basis of his or her conclusions about the child. Thus, the Department is not deleting § 96.49(e)(3). The Department has, however, revised the standard to require that non-medical individuals provide only information on what data and perceptions were used to draw conclusions. The Department agrees that requiring an additional level of specification as to whether the individual relied on objective data or subjective perceptions in making the assessment is unnecessary.

8. *Comment:* Several commenters request that the standard in § 96.49(e), which sets out specific requirements for medical information provided by the agency or person, apply only if the agency or person provides medical information that is not the medical information provided by the Convention country to the agency or person.

Response: The Department has revised the standard at § 96.49(e) so that it applies only when the agency or person is providing medical information other than the information provided by public foreign authorities. We recognize that the agency or person may not be able to insist that the public foreign authority include specific information. In addition, the Department has added a provision to specify that, when the agency or person is providing medical information covered under the standard, it must make ''reasonable efforts'' to provide the specific information required under § 96.49.

9. *Comment:* Several commenters believe Central Authorities, rather than the accredited agencies or approved persons, should be responsible for providing accurate medical information.

Response: Under Article 16 of the Convention, the Central Authority of the country of origin, or other entities authorized to perform certain of its duties, must prepare a report on the child. This report must include information about the child's identity, adoptability, background, social environment, family history, and medical history (including that of the child's family), and any special needs of the child. The general medical history is just one component of the report. The IAA, on the other hand, requires the Department to impose very specific requirements regarding obtaining medical records on U.S. accredited agencies and approved persons. The primary purpose of § 96.49 is to implement the IAA requirements that agencies and persons obtain medical records and transmit them to the prospective adoptive parent(s).

10. *Comment:* Several commenters request that videotapes be required only when it is possible to obtain them from the child's country of origin. Two commenters believe videotapes of the child should be translated.

Response: The Department made a series of changes to § 96.49 to clarify the requirements related to videotapes of the child. Section 96.49(k) has been modified to clarify that prospective adoptive parent(s) must be allowed to obtain physician review of videotapes only if such tapes are available; this provision has not been specifically limited to videotapes obtained from the child's country of origin because the relevant question is whether a videotape is available, not where it is available from. The Department has also revised § 96.49(i) so that it explicitly states that an agency or person must ensure that videotapes and photographs of the child comply with the laws of the country where taken or recorded. In addition, § 96.49(c) now requires that an agency or person must provide the prospective adoptive parent(s) with any untranslated videotapes and an opportunity to translate any videotape that is provided.

11. *Comment:* Some commenters believe that a detailed summary of medical records should normally be sufficient because original medical records are typically voluminous. Such commenters also request that if the prospective adoptive parent(s) have been given only a summary of the medical records, if the summary was produced by anyone other than the orphanage director, physician, or a person designated by the Central Authority of the country of origin, they should also be provided with the original medical records. Other commenters request that § 96.49(a) and (b) be replaced with language that more closely tracks the IAA requirement for a standard that an agency or person provide a copy of the medical records of the child (which, to the fullest extent practicable, shall include an English language translation of such records) on a date which is not later than the earlier of the date that is two weeks before: (I) the adoption; or (II) the date on which the prospective adoptive parent(s) travel to a foreign country to complete all procedures in such country relating to the adoption. Of particular concern was the fact that the proposed regulation did not appear to set a timeframe for the production of an English translation of the medical records.

Response: The Department recognizes that some medical records may, inherently, summarize or collect information based on other medical records, but it does not believe that the type of ''summary'' of original medical records that the commenters propose would suffice to meet the IAA requirement that a copy of the child's medical records be provided. While an agency or person would not be precluded from producing a summary of medical records on a voluntary basis for its clients, any such summary alone would not meet the standard in § 96.49(a), which requires production of a copy of the medical records.

The Department has revised and restructured §§ 96.49(a) and (b) to respond to the concern that the proposed rule did not set a time frame for the production of translations. Section 96.49(a) now clearly states that the medical records, including, to the fullest extent practicable, a correct and complete English-language translation of such records, must be produced within the time frames established by the IAA.

Section 96.49(b) now clearly states that where any medical record provided is a summary or compilation of other medical records, the agency or person is also required to provide the underlying medical records, if available.

12. *Comment:* Two commenters request that the phrase ''all available medical records'' be substituted for the phrase ''the medical records'' in § 96.49(a) and (b).

Response: The Department believes that this change is unnecessary, because § 96.49 clearly establishes that the obligation is to provide the medical records (including any available

underlying medical records related to a medical record that summarizes or compiles information), and to make reasonable and ongoing efforts to obtain a wide range of additional medical information. Section 96.49(j) also sets a standard prohibiting withholding, or misrepresenting, any available medical information concerning the child.

13. *Comment:* A commenter requests clarification that any State standards requiring a more timely and/or comprehensive disclosure of medical history would continue to apply to agencies and/or persons licensed in that State.

Response: This regulation is not intended to preempt any applicable State standards that require more timely and/or comprehensive disclosure of medical history.

14. *Comment:* One commenter believes that a U.S.-based physician should be required to evaluate medical information. The commenter also requests that the regulations require agencies and persons to provide a list of capable U.S. physicians who specialize in interpreting medical information from applicable countries of origin.

Response: Mandating that agencies and persons retain U.S. doctors directly to review all medical records would be a major change in the current practice of intercountry adoptions. Typically, it is the prospective adoptive parent(s) who select and retain a U.S. physician to complete a review and assessment of all available information on the child. We see no reason to change this practice. The regulations requiring advance disclosure of a child's medical information to prospective adoptive parent(s) are designed, at least in part, to ensure that prospective adoptive parent(s) have enough time to have the child's records reviewed by a U.S. physician, if they choose to do so, before they agree to adopt a particular child. While it may be helpful for agencies and persons to provide lists of U.S. physicians who specialize in intercountry adoptions who may be able to interpret foreign medical records, we do not think it is necessary to proper implementation of the Convention or IAA.

Section 96.50—Placement and Post-Placement Monitoring Until Final Adoption in Incoming Cases

1. *Comment:* Two commenters maintain that sending a guardian to bring a child from the country of origin should be an equally acceptable alternative to prospective adoptive parent(s) traveling to the country of origin to receive a child. They request that the words ''and, if possible, in the company of the prospective adoptive parent(s)'' be deleted from §§ 96.50(a) and 96.51(a), so as to avoid the implication that use of a guardian is a less desirable approach.

Response: Sections 96.50(a) and 96.51(a) mirror Article 19 of the Convention, which states that Central Authorities shall ensure the ''transfer takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parent(s).'' The phrase, ''if possible'' provides a degree of flexibility in cases in which travel with a properly trained escort offers an appropriate, secure alternative for transferring a particular child from the child's country of origin when adoptive or prospective adoptive parent(s) are unavailable.

2. *Comment:* A commenter requests that the regulations specify who will assume the costs of returning the child to the country of origin in the case of disruption when such return is determined to be in the child's best interests. The commenter also suggests that for adoptions that are not finalized within a set period of time, there should be a requirement for a decision to be made whether it is in the best interests of the child to remain in a guardianship arrangement in the United States or return to the country of origin. Another commenter believes that, even if an adoption is disrupted, the child should never be returned to his or her country of origin.

Response: The Department believes that the standards in § 96.50 adequately address the responsibility for costs of returning a child to the country of origin, in the case of a disruption. Section 96.50(f)(1) requires that the agency or person include in its adoption services contract with the prospective adoptive parent(s) a plan addressing who will have legal and financial responsibility for transferring custody in an emergency or in the case of impending disruption, and for care of the child. The contract between the agency or person and the prospective adoptive parent(s) should address who will assume the costs of returning the child to his or her country of origin and who will assume the costs of the child's care until the return is completed. Section § 96.50(f)(2) also requires that the plan address the circumstances in which the child will be returned to the child's country of origin, as a last resort, if that is determined to be in the child's best interests. The Department believes that these provisions are adequate to cover the rare case in which there is a disruption and it is determined to be in the child's best interests to return to the country of origin.

These regulations are not intended to change currently applicable laws, under which a State court determines whether a placement is in the best interests of a child before his or her adoption is finalized in the U.S. State court. In the event that the initial placement is found not to be in the best interests of the child, or is otherwise disrupted, § 96.50(d) and (e) of the regulation establish that the agency or person is responsible for finding an alternate placement for the child.

The Department has not changed the rule to prohibit the return of a child to his or her country of origin in the case of a disruption, because there may be instances in which such return is in the child's best interests. Section 96.50(e)(2) makes clear that an agency or person must obtain the agreement, in writing, of the Central Authority of the country of origin and of the Department to any such return.

3. *Comment:* A commenter requests that the Department track adoptions that are to be finalized in the United States.

Response: The tracking of intercountry adoptions is not within the scope of these regulations on accreditation/approval. Section 102(e) of the IAA requires the Department and DHS to jointly establish a Case Registry of all adoptions involving immigration of children into the United States regardless of whether an adoption occurs under the Convention. In addition, section 104 of the IAA requires the Department to submit an annual report to Congress that will provide information concerning intercountry adoptions involving immigration to the United States, including information on adoptions that are finalized in a U.S. State court. The reporting requirements set forth in § 96.43 will assist the Department in obtaining this information and fulfilling its reporting obligations.

4. *Comment:* Several commenters emphasize the importance of post-placement monitoring. They express support for this section of the proposed regulations. One commenter would like the regulations to provide minimum uniform standards for post-placement monitoring.

Response: While the Department also recognizes the importance of post-placement monitoring, the standards provided in § 96.50 are straightforward and we do not believe additional changes to the regulations, to require additional uniformity in how post-placement monitoring is conducted, are required.

5. *Comment:* Several commenters are concerned that adoptive parent(s) will not comply with the post-placement

monitoring (as opposed to post-adoption monitoring) requirements. For the protection of agencies and persons, they would like the regulations to provide a means for securing parental compliance with post-placement supervision. One commenter requests that the regulations require agencies and persons to notify prospective adoptive families of the frequency and total number of post-placement reports.

Response: These regulations include standards on post-placement monitoring because post-placement monitoring is an adoption service under the Convention and the IAA. Their focus is necessarily on adoption service providers, however, not on prospective adoptive parent(s), who the Department recognizes may choose not to cooperate with an agency or person providing post-placement monitoring. While these regulations do not regulate prospective adoptive parent(s) directly, the agency or person may take into account the prospective adoptive parent(s)' lack of post-placement cooperation in determining whether it is appropriate to proceed to adoption.

Please note that § 96.50(g) only requires that the agency or person provide post-placement reports to the Convention country if they are required by the Convention country, and then only until the adoption of the child is final. Section § 96.50(g)(1) of the regulations has been revised to require that prospective adoptive parent(s) be informed about the required post-placement reports in the written adoption services contract prior to the referral of the child for adoption. The Department expects such notice would include the frequency and number of post-placement reports. We are hopeful that this written notice will encourage prospective adoptive parent(s) to cooperate with the agencies or persons, because all parties will want to ensure that the adoption is finalized successfully.

Section 96.51—Post-Adoption Services in Incoming Cases

1. *Comment:* Several commenters are concerned that parents will not comply with any post-adoption reporting requirements imposed by countries of origin. Other commenters recommend that agencies and persons be required to provide post-adoption reports. Still other commenters recommend that agencies and persons provide post-adoption services when the family requests such services. They suggest that providing post-adoption services should not be voluntary.

Response: The Department recognizes that the potential for parents not cooperating with post-adoption reporting requirements is at least as great as the potential for non-cooperation with regard to post-placement reporting. This issue is not appropriately addressed by holding agencies and persons responsible in the accredition/approval context for failing to produce post-adoption reports, however, particularly because post-adoption reporting and other services provided after the child's adoption are not included in the IAA's list of adoption services that must even be provided by an accredited agency or approved person, and because we are not regulating adoptive parents in these regulations. While § 96.51(e) of the proposed rule would have regulated agencies and persons who voluntarily provided post-adoption services, the Department has decided to delete the standard to be consistent with the general approach taken in the IAA and these regulations, of not regulating any post-adoption services.

We understand that countries of origin that require post-adoption reports may stop working with U.S. agencies or persons or close adoption programs to U.S. prospective adoptive parent(s) if they cannot obtain the post-adoption reports. We anticipate that this issue will be addressed, however, by all providers and parents working cooperatively together in the understanding that doing so benefits all concerned, including persons who hope to adopt in the future.

2. *Comment:* A commenter recommends that § 96.51(a) be deleted because it is redundant with § 96.50(a). The commenter also recommends that § 96.51(c) and § 96.50(c) be switched.

Response: Post-placement monitoring is the subject of § 96.50, whereas § 96.51 deals with post-adoption services. Thus it is not appropriate to switch §§ 96.51(c) and 96.50(c), or to delete § 96.51(a). For an explanation of the differences between post-placement monitoring and post-adoption services, please see the response to comments on § 96.2 in subpart A.

3. *Comment:* A commenter believes the Central Authority in the country of origin should be notified if an adopted child is re-placed with another family in the United States after a disruption.

Response: Section 96.50(f)(4) requires agencies and persons to include in their written adoption services contract with the prospective adoptive parent(s) a plan describing, among other things, how the Central Authority of the child's country of origin and the Department will be notified if there is a disruption in the United States before final adoption.

4. *Comment:* A commenter requests that the regulations require agencies and persons to be responsible for placement of a child within an identified time frame after a dissolution takes place.

Response: The Department is not changing the rule to mandate that agencies or persons take actions after a dissolution takes place. Adoption services provided after dissolution are post-adoption services, which are outside the scope of these regulations. While both the IAA and the Convention contain provisions dealing with disruptions, which occur before an adoption is finalized, neither mandates any behavior with respect to dissolutions (other than reporting, whenever possible). The Department has tried to be consistent in not regulating post-adoption services in these regulations on accreditation/approval. Therefore, § 96.51(b) requires only that the agency's or person's adoption services contracts with prospective adoptive parent(s) inform the parents whether services will be provided if the adoption is dissolved and, if so, include a plan describing the responsibilities of the agency or person upon a dissolution.

We recognize that this may be unsatisfactory for State child welfare authorities faced with finding placements for children from dissolved intercountry adoptions. This rule is not intended to change any applicable State child welfare or protection law, however, or any applicable State law on the financial responsibility of parents for the post-dissolution care of the child. We note also that section 205 of the IAA amended section 422(b) of the Social Security Act, 42 U.S.C. 622(b) to require States to collect and report information on children who enter into State custody because of the disruption of a placement for intercountry adoption or the dissolution of an intercountry adoption. Thus, it should be possible in the long run to monitor disruptions and dissolutions and to evaluate any problems they are creating.

Section 96.52—Performance of Hague Convention Communication and Coordination Functions in Incoming Cases

1. *Comment:* A commenter believes that it is unreasonable for an agency or person to keep the Central Authority of the Convention country and the Department continuously informed about the adoption process.

Response: The Department has amended §§ 96.52(a) and 96.55(a) to clarify that an agency or person must keep the Central Authority of the Convention country and the Department

informed about the adoption process only as necessary. So, for example, if regulations outside this Part, such as visa regulations, require an agency or person to provide information to the Department about the completion of a particular step in the adoption process, this standard ties the agency's or person's accreditation status to compliance with the other regulation. We believe this clarification will reduce any undue burden on agencies or persons.

2. *Comment:* A commenter suggests that § 96.52(e) be deleted because it is too vague and presents a federalism issue. Section 96.52(e) requires the agency or person to take appropriate measures to perform any tasks in a Convention adoption case that the Department identifies are required to comply with the Convention, the IAA, or any regulations implementing the IAA.

Response: We have not deleted this provision because we want to ensure that the Department can rely upon the accredited agencies and approved persons to perform those tasks entrusted to them under the IAA's scheme for governing Convention adoptions involving the United States. Accredited agencies and approved persons will be notified of a case-specific task the Department identifies as necessary. We do not feel this section presents a federalism issue because the IAA gives the Department broad authority over Convention implementation, including the coordination of activities under the Convention by persons subject to the jurisdiction of the United States. Moreover, this rule does not direct state action. The States may continue to license agencies and persons to perform adoption-related services; where these regulations apply, they will be in addition to, not replacing, state regulation.

Standards for Cases in Which a Child Is Emigrating From the United States (Outgoing Cases)

Section 96.53—Background Studies on the Child and Consents in Outgoing Cases

1. *Comment:* Several commenters recommend that the regulations require additional information to be provided in the child's background study. Recommendations for such additions include: a psychosocial evaluation, non-identifying medical and genetic information, the name and contact information of the physician who performed the assessment, and non-identifying family history. Commenters recommend that prospective adoptive parent(s) receive a copy of the medical records of the child prior to the adoption.

Response: The Department recognizes that providing substantial background information on a child can be helpful for both prospective adoptive parent(s) and children. With such information, prospective adoptive parent(s) may better understand the needs of the child, and a child will more likely be placed in a home where his or her needs would be met. We nevertheless have not expanded the standard in § 96.53(a). The standard is consistent with IAA which incorporates the requirements of Convention Article 16, which requires information on the child's identity, adoptability, background, social environment, family history, and medical history, including that of the child's family, and any special needs of the child. We do not believe it is appropriate to make this standard more burdensome, but we note that any State law requirements applicable to a child background study will continue to apply.

While we have not changed the substantive requirements of § 96.53(a), we have reorganized §§ 96.53(a) and (b) to present the requirements more clearly. For example, it should now be clear that an agency or person is always responsible for ensuring that the information listed in §§ 96.53(a)(1)–(3) is included in the child background study. We have also revised § 96.53(b) to clarify that a supervised provider may also prepare a child background study, so long as any applicable review and approval requirements are met.

Section 96.53(e) requires that the U.S. agency or person send the child background study to the Central Authority or other competent authority or accredited bodies of the receiving country. In response to the suggestion that the medical records of a child should be transmitted prior to the adoption, we have added to § 96.53(e) language that makes it clear that the agency or person should take all appropriate measures to transmit the child background study before the child's adoption. The regulations do not prohibit a U.S. accredited agency or approved person from also providing the child background study to the prospective adoptive parent(s) directly, if consistent with applicable State law and the law of the receiving country.

2. *Comment:* Several commenters would like the regulations to recommend a pre-placement visit between the child and the prospective adoptive parent(s), when the child is of appropriate age.

Response: Although we understand that a pre-placement meeting typically makes a child feel more comfortable about the transition to an adoption placement, the Convention and the IAA are silent on the subject of requiring a pre-placement visit, and the Department does not believe it is appropriate to impose such an additional requirement in these regulations on accreditation/approval. If applicable State law requires a pre-placement visit, then that requirement will apply to an intercountry adoption of a U.S. child emigrating to a Convention country.

3. *Comment:* Several commenters request that the minimum age for considering the child's wishes about the adoption be changed from ten to twelve years.

Response: The Department has changed § 96.53(d) in response to these comments, and in recognition of the fact that twelve is a widely accepted minimum age of consent as reflected in the Uniform Adoption Act, § 2–401(c). Section § 96.53 now provides that, unless State law provides a different age, if the child is twelve or older an agency or person must give due consideration to a child's wishes or opinions before determining that an intercountry adoption placement is in the child's best interest. While some State laws may be silent on this question, we believe that most States generally require a child's wishes must be considered at an age between 10 and 14 years.

4. *Comment:* A commenter recommends that the regulations require consent from both birth parents, not just the birth mother.

Response: The Department is not changing § 96.53(c) in response to these comments, because § 96.53 of the regulations reflects the language of Article 4 of the Convention on consents. The Department does not want to impose any requirements for consents in addition to those required specifically under the Convention and IAA. Section 96.53(c), consistent with Article 4, requires that the consent of any persons whose consent is necessary for the adoption has been obtained. Accordingly, in any case in which State law requires the consent of the birth father, in addition to that of the birth mother, § 96.53(c) would require that the consent of both birth parents be obtained.

5. *Comment:* One commenter would like the phrase ''takes all appropriate measures to ensure'' found in § 96.53(a) and § 96.53(c) changed to ''ensures.''

Response: We have kept ''takes all appropriate measures to ensure'' in the final rule, because primary providers

will be working with public domestic authorities or competent authorities who will be performing some of the tasks required under the Convention to complete a Convention adoption. The primary provider is not responsible for the quality of a public domestic authority's or competent authority's services when they complete Convention tasks, as reflected in § 96.14. Because these authorities are not accountable to the primary provider, it would be unfair to set a standard making the primary provider responsible for their actions. Agencies and persons are required, however, to take all appropriate measures to ensure that Convention tasks are conducted in accordance with the standards set forth in § 96.53.

6. *Comment:* Several commenters recommend that the regulations require that birth parents or other authorities whose consent is necessary to be counseled that their consent will result in the child living in a foreign country. They also recommend that the specific country of destination be named during the counseling.

Response: We agree that full disclosure of the effects of consent is important, but we are not amending § 96.53(c) in response to this comment. The purpose of § 96.53(c) is to incorporate the requirements on consents set forth in Article 4 of the Convention, not to impose any additional specific requirements on what information must be provided to persons or institutions whose consent must be obtained.

Article 4 of the Convention requires that the country of origin ensure that persons whose consent is required be counseled as may be necessary and informed of the effects of their consent, particularly with respect to whether an adoption will result in the termination of the legal relationship between the child and the birth family. The Convention language does not contain any additional specific requirements regarding the contents of the counseling, and the relevant IAA provision simply states that State courts with jurisdiction over a Convention adoption must be satisfied that the agency or person complied with Article 4.

Where applicable State laws establish more specific requirements about the contents of counseling, the agency or person will have to comply with these laws in addition to the IAA. Moreover, § 96.54(d) specifically provides that, if State law requires, agencies and persons must disclose to birth parents that the child will be adopted by parents who reside outside of the United States.

Because the Department does not intend to create Federal consent requirements beyond those required under the Convention and applicable State law, we have removed from § 96.53(c)(5) the specific requirement that a child be counseled and duly informed that his or her consent would result in the child living in another country.

Section 96.54—Placement Standards in Outgoing Cases

1. *Comment:* Numerous commenters would like the regulations to make it more difficult to place U.S. children abroad. Some commenters suggest that agencies and persons should be prohibited altogether from placing children who are born in the United States for intercountry adoption. Other commenters agree that U.S. children may be placed overseas, but think that the standard requiring reasonable efforts to find a timely adoptive placement for the child in the United States is too vague. Another commenter notes that not all children adopted from the United States will be infants, and asks whether children who are not newborns are required to be placed on a registry for a specific period of time. Other commenters request that the length of time of listing on an adoption exchange or registry be changed from thirty to sixty days.

Response: There is no basis in the Convention or the IAA for prohibiting U.S. children from participating in intercountry adoption. The Convention explicitly recognizes that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her country of origin. Article 4 of the Convention states that, after possibilities for placement within the country of origin have been given ''due consideration,'' competent authorities may determine that intercountry adoption is in the child's best interests.

Accordingly, section 303(a)(1) of the IAA requires that an accredited agency or approved person ensure that, in a Convention adoption involving emigration from the United States, ''it has made reasonable efforts to actively recruit and make a diligent search for prospective adoptive parent(s) to adopt the child in the United States,'' and that ''despite such efforts, it has not been able to place the child for adoption in the United States in a timely manner.'' In furtherance of section 303(a)(1), § 96.54(a) provides guidance to agencies or persons on how to satisfy the ''reasonable efforts'' standard. Except in special circumstances, to demonstrate that the reasonable efforts standard has been met, an agency or person is now required by §§ 96.54(a)(1) through (4) to: (1) disseminate information about the child and the child's availability for adoption through print, media, and internet resources designed to communicate with potential U.S. prospective adoptive parent(s); (2) list information about the child on a national or State adoption exchange or registry for at least sixty calendar days after the birth of the child; (3) respond to inquiries about adoption of the child; and (4) provide a copy of the child background study to potential U.S. prospective adoptive parent(s).

Note that, in response to several comments, the time period set out in § 96.54(a)(2) for listing a child on a national or State adoption exchange or registry has been increased from thirty days to sixty days after the birth of the child. We believe this additional time will help ensure that reasonable efforts are taken to place the child within the United States, without unduly delaying an intercountry adoption if one proves to be in the best interests of the child. This time period remains sufficiently short to avoid harming a child by keeping it on a registry for an excessive period of time (a concern expressed by some adoption experts who testified before Congress during consideration of the IAA).

Note also that the requirement to be registered for ''at least sixty days after the birth of the child'' applies both to newborn children and to older children. That is, every child must be listed for at least sixty days. The limitation of ''after the birth of the child'' is intended to preclude listing children before they are born.

2. *Comment:* Some commenters recommend that children emigrating from the United States be provided with assurances of citizenship in their adopted countries.

Response: The Department cannot control how Convention countries will apply their citizenship laws. Article 5 of the Convention provides, however, that a Convention adoption may proceed only after the competent authorities in the receiving country determine that the child is or will be authorized to enter and reside permanently there. Consistent with this requirement, § 96.55(d)(4) requires U.S. agencies or persons to transmit or provide to State courts evidence that the child will be authorized to enter and reside permanently (or on the same basis as that of the prospective adoptive parent(s)) in the receiving country.

3. *Comment:* Certain commenters believe that the regulations should mandate that receiving countries other

than the United States provide post-adoption services.

Response: Article 9 of the Convention requires each country to promote post-adoption services, but there is no requirement in the Convention that case-specific post-adoption services be provided in a receiving country. The availability of these services will be determined by the receiving country, its adoption service providers, and its law. The Department does not have the authority to impose such a requirement on Convention countries.

4. *Comment:* One commenter would like the regulations to address access to and retention of records in the receiving Convention country about U.S. children placed in that country.

Response: The Department has no authority to impose such a requirement on a receiving country. Access to and retention of records held in a Convention country will be governed by the laws of that country.

5. *Comment:* One commenter questions the authority of the Department to create or to impose on States any ''preference'' with regard to ''best interests of the child'' in the standards.

Response: The Department does not intend in this rule to create or impose new ''preferences'' that would influence States concerning the best interests of the child standard. Section 96.2, in defining ''Best interests of the child'' for the purposes of this part, specifically states that the term shall have the meaning given to it by the law of the State with jurisdiction to decide whether a particular adoption or adoption-related action is in the child's best interests. In this context, the standards require that an agency or person must determine that a placement is in a child's best interests, consistent with applicable State law on best interests of the child. Ultimately, it is up to the State court with jurisdiction to determine if the intercountry adoption meets all State law requirements and any applicable Convention and IAA requirements.

6. *Comment:* A commenter asks where the Department finds authority to mandate that the agency or person use ''diligent efforts to place siblings together.''

Response: Consistent with our general approach of not creating new Federal requirements for Convention cases involving U.S. children where there is not specific language in the Convention or the IAA, and in response to this comment, we have modified the standard at § 96.54(c)(2) to require that agencies and persons make diligent efforts to place siblings together ''to the extent consistent with State law.''

7. *Comment:* Several commenters request that the U.S. accredited agency or approved person be informed if there is a disruption in an outgoing case. They also request that the standard address who will pay for the child's transportation back to the United States if returning the child is determined to be in the child's best interests.

Response: The Department expects that an agency or person will typically remain in contact with the relevant entities in the receiving country as a result of its compliance with the standards set forth in §§ 96.54(i)–(k), and therefore will likely be aware of any disruption. Article 21 of the Convention gives, however, the Central Authority of the receiving country the primary responsibility for determining when an adoptive placement is not in the best interests of the child. If the Central Authority of the receiving country or, where appropriate, another entity performing its duties, determines that continued placement of a child with the prospective adoptive parent(s) is not in the child's best interests, it will have a number of responsibilities to protect the child. For example, the Central Authority, or other entity performing its duties, will have to arrange for the child to be removed from the prospective placement and will have to arrange temporary care; and, in consultation with the Central Authority of the country of origin (the Department) or, as appropriate, other entities performing U.S. Central Authority duties under the Convention, it will have to arrange for a new placement in the receiving country. If it cannot find an alternative placement, the Central Authority, or other entity performing its duties, as appropriate, must arrange for the return of the child to the United States. Section 96.54(k) requires that the agency or person consult with the Department before it arranges any return to the United States of any child who has emigrated in connection with a Convention adoption, and the Department anticipates that it will consult with the relevant agency or person, as appropriate, in any instance in which it learns of contemplated arrangements for return that do not already involve the agency or person.

Under the Convention, returning a child to the country of origin is a last resort. The child may still be a U.S. citizen and could be eligible for the Department to pay for his or her transportation expenses through the Department's loan repatriation program (for more information go to *http://travel.state.gov/law/overseascitizens.html*). Otherwise, the cost of returning the child to the United States may depend on what person or entity has legal custody or guardianship of the child.

8. *Comment:* Several commenters recommend that the home studies for prospective adoptive parent(s) of children emigrating from the United States include the same information that is required in § 96.47(a) of the regulations for home studies involving immigrating children.

Response: The Department is not making any change in response to these comments. The contents of a home study in an outgoing case under the Convention will be determined by the law of the receiving country and the law of the U.S. State where the adoption is proceeding.

9. *Comment:* Two commenters recommend that § 96.54(b) include language that specifies not merely that a timely placement was sought, but that a qualified adoptive placement was sought.

Response: The Department recognizes that locating a qualified placement is as important as finding a placement quickly. We have changed § 96.54(b) to state that efforts must be made to find a timely and qualified adoptive placement.

10. *Comment:* One commenter requests that a ''relative'' be defined. It believes that if ''relative'' is not spelled out clearly, the exception in § 96.54(a) from efforts to find a timely adoptive placement in the United States for adoptions by relatives will be subject to abuse.

Response: The State court that has jurisdiction over an intercountry adoption will look to its own State law to determine whether it is satisfied that reasonable efforts have been made to find a U.S. placement. Accordingly, we do not believe it is necessary to provide a definition of ''relative'' in these regulations in order to deter abuse of this exception.

11. *Comment:* Several commenters recommend the elimination of the exception to reasonable efforts provided in § 96.54(a), which allows birth parents to identify specific adoptive parents. Other commenters would like the birth parents to have more input on who adopts their child.

Response: We have not made changes in response to these comments, other than to clarify, in § 96.54(b), that the standard does not, in fact, provide an exception to the ''reasonable efforts'' rule; rather it provides exceptions to the prospective adoptive parent recruiting procedures set forth in § 96.54(a)(1)–(4), thereby recognizing that in some cases,

''reasonable efforts'' can include no efforts at all, if no such efforts are in the child's best interests. The regulations also permit a State court to accept or reject an accredited agency's or approved person's recommendation that it is not in the best interests of a particular child that the procedures set forth in § 96.54(a)(1)–(4) be followed. This approach is fully consistent with the Convention, which requires merely that ''due consideration'' be given to placing the child in the United States, as well as with the IAA.

On the question of birthparent preferences, the rule aims for consistency with current practices under State law, by allowing birth parents to select among prospective adoptive parent(s), so long as State law permits them to do so. Some birth parents may prefer that their child be placed with a relative in another country who has the capacity to provide suitable care for the child. Other birth parents may prefer a non-relative placement abroad. Nothing in the Convention or the IAA warrants taking a course different from applicable State law on the question of birthparent preferences.

12. *Comment:* One commenter seems to believe that the accreditation/approval standards may give the misleading impression that it will be an accredited agency or approved person who will decide the fate of outbound children when, in actuality, it will be done by State courts.

Response: It is correct that the State courts, not agencies or persons, will decide whether an outgoing adoption complies with applicable provisions of the Convention, the IAA, and State law, and thus may proceed. These standards apply to agencies and persons, however, and as such address Convention tasks that may be required of an agency or person. Such tasks may include gathering information and submitting it to the court in outgoing cases, in which case the agency or person must submit information to the State court that satisfies the Convention and IAA requirements.

Section 96.55—Performance of Hague Convention Communication and Coordination Functions in Outgoing Cases

Comment: A commenter requests clarification that nothing precludes access to adoption process information by a State licensing authority to the extent otherwise authorized by State law.

Response: The commenter is correct. Nothing in the Convention, the IAA, or this part is meant to preclude a State licensing authority from obtaining information to the extent permitted or required under the State law of the licensing authority.

Subpart G—Decisions on Applications for Accreditation or Approval

Subpart G is organized in the same way as in the proposed rule, and includes § 96.57 (Scope); § 96.58 (Notification of accreditation and approval decisions); § 96.59 (Review of decisions to deny accreditation or approval); § 96.60 (Length of the accreditation or approval period); and § 96.61 (Reserved).

As discussed below, Section 96.60(b) has been modified to allow the accrediting entity more discretion.

Section 96.59—Review of Decisions To Deny Accreditation or Approval

Comment: Two commenters believe that the Department should revise § 96.59 to provide a right of administrative review of denied applications for accreditation or approval. One commenter states that such review is particularly necessary for the initial implementation period.

Response: The Department is not revising § 96.59 in response to these comments, because denial of accreditation or approval is not included as an adverse action under section 202(b)(3) of the IAA and is therefore not subject to a right of judicial review or administrative review. The Department notes, however, that § 96.59(b) permits the agency or person to petition the accrediting entity for reconsideration of the denial, pursuant to the accrediting entity's internal review procedures. For further discussion of this issue, please refer to Section IV, C, paragraph 11 of the preamble for the proposed rule, published at 68 FR 54064, 54087.

Section 96.60—Length of Accreditation or Approval Period

1. *Comment:* Two commenters request that the regulations state that the fees for accreditation and approval will be adjusted to reflect whether an agency or person is accredited or approved for three or five years, instead of four.

Response: The Department agrees that the length of the accreditation or approval period is a factor that an accrediting entity may consider when setting its fees, but because the fee schedules are not included in these regulations the Department is not making any change in response to this suggestion. Please see the comments on § 96.8 for discussion of accrediting entity fees.

2. *Comment:* Two commenters support the ability of accrediting entities to vary the length of accreditation periods, and request that the Department allow agencies and persons to volunteer to become initially accredited or approved for other than four years. Alternatively, the commenters request that the Department require accrediting entities to choose which agencies or persons will be accredited or approved for other than four years by a random process.

Response: The criteria for choosing which agencies and persons will be accredited or approved for a period of other than four years will be established by the accrediting entities and approved by the Department. The Department believes that the accrediting entities will have the expertise to decide the appropriate criteria to make such determinations, and that the Department should not attempt to predetermine how such decisions are made. For example, it is unclear whether the wishes of the agency or person should be given weight, whether the process should be random, or whether the period should reflect the degree to which the agency or person demonstrates ''substantial compliance.'' Thus, we have not changed the regulation to include such criteria. In addition, the Department has modified § 96.60(b) to remove the requirement that accrediting entities consult with the Department before deciding the exact period for which a particular agency or person will be accredited or approved in the first accreditation or approval cycle. We believe that this approach will improve the efficiency of the accreditation process.

Subpart H—Renewal of Accreditation or Approval

Subpart H is organized in the same way as in the proposed rule, and includes § 96.62 (Scope); § 96.63 (Renewal of accreditation or approval); and § 96.64 (Reserved).

Section 96.63 has been revised in response to comments, discussed below, and § 96.63(a) has been revised to clarify that, while the accrediting entity will tell accredited agencies and approved persons it monitors of the date by which they should seek renewal, it is the accredited agency's or approved person's responsibility to seek renewal in a timely fashion.

Section 96.63—Renewal of Accreditation or Approval

1. *Comment:* A commenter requests that the Department add ''probation'' to § 96.63 as another status for an applicant. The commenter suggests that

this status could last for up to nine months after the expiration of an accreditation or approval period and provide accredited agencies or approved persons a period within which to correct any deficiencies in their compliance with the standards of subpart F.

Response: We have not added the status of ''probation'' to the rule because it is not a concept used in the IAA. We believe, however, that the rule already addresses the commenter's concern, to the extent that § 96.63(c) provides that an accrediting entity may defer its renewal decision in order to give an accredited agency or approved person notice of any deficiencies and an opportunity to correct them before the accrediting entity decides whether to renew the accreditation or approval.

2. *Comment:* A commenter asserts that the focus of accrediting entities in renewal applications should be on an agency's or person's performance, rather than on merely reviewing documents.

Response: The Department has revised § 96.63(d) to incorporate specifically into renewal procedures the provisions of § 96.24, relating to procedures for evaluating applicants for accreditation or approval. Section 96.24 provides that accrediting entities may conduct interviews, as well as document reviews, during site visits. Thus, an accrediting entity's renewal evaluation of an accredited agency or approved person, like its initial evaluation, may include both document review and interviews. See also the discussion of this issue in response to comments on § 96.27. The Department also notes that § 96.27(b) requires an accrediting entity to consider an accredited agency's or approved person's actual performance, for the purposes of renewal, in deciding whether the agency or person is in substantial compliance with the standards in subpart F.

Subpart I—Routine Oversight by Accrediting Entities

Subpart I is organized in the same way as in the proposed rule, and includes § 96.65 (Scope); § 96.66 (Oversight of accredited agencies and approved persons by the accrediting entity); and § 96.67 (Reserved).

Section 96.66 has been revised in response to comment, as discussed below.

Section 96.66—Oversight of Accredited Agencies and Approved Persons by the Accrediting Entity

1. *Comment:* A commenter recommends that the Department clarify the duties of accrediting entities to monitor accredited agencies or approved persons annually. Specifically, the commenter states that the Department should specify that accrediting entities will monitor substantial compliance based on a weighting and rating system.

Response: The Department believes that this is addressed in the rule, as § 96.66(a) provides that an accrediting entity must monitor accredited agencies and approved persons at least annually to ensure that they are in substantial compliance with the standards in subpart F, as determined using a method approved by the Department in accordance with § 96.27(d).

To further strengthen the accrediting entity's oversight, however, the Department has added § 96.66(c), under which an accrediting entity must require accredited agencies and approved persons to attest annually that they have remained in substantial compliance and to provide supporting documentation to indicate ongoing compliance with the standards in subpart F. Any other additional specifications related to the annual monitoring duties of accrediting entities will be detailed in the agreement between the accrediting entity and the Department.

2. *Comment:* A commenter requests that the Department add to subpart I a system for oversight of accredited agencies and approved persons through a complaint system. The commenter also notes the importance of oversight through the investigation of complaints.

Response: Oversight through review of complaints is primarily addressed in subpart J of this rule. Section 96.66(a) provides that the accrediting entities must investigate complaints about accredited agencies and approved persons, as provided for in subpart J. Also, the accrediting entities are authorized by § 96.66(b) to conduct unannounced site visits at an accredited agency's or approved person's premises for the purposes of investigating a complaint against an accredited agency or approved person. Therefore, we did not make any additional modifications to subpart I.

3. *Comment:* A commenter states that the oversight provisions of the regulations should focus on checking the performance of agencies and persons through interviews with clients and personnel, rather than simply reviewing documents.

Response: This comment is very similar to the comment on § 96.63 with respect to procedures for renewals of accreditation and approval, and to comments on § 96.27. Section 96.27(b) applies to accrediting entity oversight and requires an accrediting entity to consider an accredited agency's or approved person's actual performance, for the purposes of monitoring and enforcement, in deciding whether the accredited agency or approved person is in substantial compliance with these regulations. Therefore the Department does not believe it is necessary to revise the rule to respond to this concern.

4. *Comment:* One commenter suggests that each agency or person be required to provide a representative with whom the accrediting entity can have ongoing communications about compliance with accreditation standards.

Response: The Department agrees that it will be important for accrediting entities to have clear channels of communication with accredited agencies and approved persons, but does not believe this must be addressed in the rule. The Department intends to allow accrediting entities and accredited agencies and approved persons to set up day-to-day communication procedures that work for them.

5. *Comment:* A commenter states that accrediting entities should not conduct investigations. It believes that allowing them to perform investigations will result in a situation similar to the problems currently facing State licensing authorities, which it believes do not have sufficient legal authority or personnel to do appropriate investigations.

Response: The Department is taking no action in response to this comment. Section 202(b)(2) of the IAA clearly gives accrediting entities the responsibility for ongoing monitoring of accredited agencies and approved persons, including review of complaints, and the Department believes enough ''checks'' and funding are built into the accreditation system to ensure that accrediting entities will conduct properly any necessary and appropriate investigations of accredited agencies and approved persons. If the Department finds that an accrediting entity is failing to monitor adequately accredited agencies or approved persons, the Department may suspend or cancel the accrediting entity's designation under § 96.10. Further, the Department, under § 204(b)(1) of the IAA, must take adverse action when an accrediting entity fails or refuses to act after consultation with the Department and the accredited agency or approved person is not in substantial compliance with the standards in subpart F. In this auxiliary role, the Department may undertake any necessary additional investigation to determine if adverse action is warranted. Finally, the

Department notes that issues involving violations of law will properly be referred by the accrediting entity to appropriate law enforcement entities.

Subpart J—Oversight Through Review of Complaints

Subpart J is organized in the generally same way as in the proposed rule, although the titles and content of some of the provisions of the final rule have been revised to more accurately convey the allocation of responsibilities and procedures for complaint review. Subpart J includes § 96.68 (Scope); § 96.69 (Filing of complaints against accredited agencies and approved persons); § 96.70 (Operation of the Complaint Registry); § 96.71 (Review by the accrediting entity of complaints against accredited agencies and approved persons); § 96.72 (Referral of complaints to the Secretary and other authorities); and § 96.73 (Reserved).

Section 96.68 has been revised to explain the types of complaints that accrediting entities will process against accredited agencies and approved persons. Section 96.69 has been revised to simplify the description of the process for filing complaints against accredited agencies and approved persons, and to clarify what types of individuals may file complaints through the Complaint Registry or otherwise. Section 96.70, on the operation of the Complaint Registry, has been revised to better convey the functions that this system will be able to perform with respect to complaints. These and other changes are discussed below, and at section III, subsection C of the preamble, above.

Section 96.68—Scope

1. *Comment:* One commenter believes that the Department treats complaint review as a matter of private dispute resolution, when it should focus, instead, on the fundamental public interests involved. The commenter suggests that the Department add a new section to subpart J clarifying that the Department has a non-delegable responsibility to investigate issues of fundamental public interest related to intercountry adoptions.

Response: The IAA creates a regulatory scheme where accrediting entities have primary responsibility for monitoring the actions of accredited agencies and approved persons, while the Department is responsible for overseeing the accrediting entities. Although a Complaint Registry is not required by the IAA, the Department has provided for the Complaint Registry in a manner consistent with this overall framework. Thus, these regulations provide for a complaint process that will ensure that most unresolved problems with accredited agencies or approved persons get reported to, and investigated by, the accrediting entities. If the accrediting entity fails to act, the Department will investigate, as appropriate, and determine if adverse action is warranted. The Complaint Registry will assist the Department in monitoring whether the accrediting entity is taking action as appropriate. The Department has added a provision at § 96.70(e) that makes clear that the Department retains authority to take any action the Department deems appropriate with respect to complaints.

Section 96.69—Filing of Complaints Against Accredited Agencies and Approved Persons

1. *Comment:* Two commenters suggest that complaints governed by this subpart should relate only to Convention adoptions and not to other adoption services provided by an agency or person.

Response: The Department agrees that the scope of this subpart should be so limited, and has modified § 96.68, the scope of subpart J, to clarify that the procedures described therein only apply to complaints that raise an issue of compliance with the Convention, the IAA, or the regulations implementing the IAA.

2. *Comment:* Two commenters recommend that the Department narrow the types of complaints that can be filed with the Complaint Registry or with accrediting entities. In particular, one of the commenters asks that the regulations not permit a complaint to be filed with the Complaint Registry merely because it cannot be resolved with the agency, because this would transform an accrediting entity into an appeal board. The commenter recommends that a complainant be required to seek out alternative resolutions, including arbitration and appeals, before filing a complaint with the Complaint Registry.

Response: The complaint system established by these regulations will allow individuals to file complaints with the Complaint Registry if they are dissatisfied with the resolution of their complaints by the agency or person. This does not, however, preclude the agency or person from offering appeals or other dispute resolution procedures, and clients will be free to pursue such procedures before filing a complaint with the Complaint Registry if they wish. In addition, while resort to the Complaint Registry will require the accrediting entity to investigate the complaint, this may allow accrediting entities to become aware of problems at an earlier stage than they would otherwise, in turn lessening the need for accrediting entities to take adverse actions, improving performance by accredited agencies and approved persons, and promoting greater compliance with the Convention, the IAA, and these regulations. Thus, we are not making the suggested changes.

3. *Comment:* Several commenters think that individuals who wish to file a complaint against an accredited agency or approved person should be able to make their complaint directly to the Complaint Registry without first having to attempt resolution with the agency or person itself. Commenters fear that an accredited agency or approved person might try to dissuade individuals from filing a complaint or take retaliatory actions against them if they complain. One commenter expresses concerns regarding how the prohibition on retaliatory action toward a prospective adoptive family will be monitored and over whether prospective adoptive parent(s) that file complaints will still be treated unfairly by an agency or person.

Response: The complaint procedures outlined in these regulations include several levels of review that should ensure that individuals who file complaints are treated fairly. If an agency or person takes any action to discourage a client or prospective client from making a complaint or retaliates against a client for making a complaint, the agency or person will not be in substantial compliance with § 96.41(e). The accrediting entities will monitor the compliance of accredited agencies and approved persons with this standard. The accrediting entities, therefore, will be a check against retaliatory action toward a complainant. The Department will act as another check against unfair treatment of complainants by an agency or person. At each level of review, an agency or person risks losing its accreditation or approval if it takes steps to retaliate against complainants. There are enough safeguards built into the complaint system that it is not necessary to change the requirement that complaints must first be filed with the agency or person.

4. *Comment:* Several commenters believe that § 96.41 of the proposed rule would limit use of the Complaint Registry to birth parents, adoptive parents, and adoptees, and recommend that the complaint process be expanded to allow other interested parties, such as health practitioners, social workers, mental health providers, and non-governmental organizations (NGOs), to

file a complaint directly with the Complaint Registry or the Department.

Response: Section 96.41 governs complaints to an agency or person, not complaints to the Complaint Registry. If any individual is not satisfied with the resolution of his or her complaint by an accredited agency's or approved person's internal complaint procedure, then he or she may file a complaint with the Complaint Registry. The Department has added a new § 96.69(c), however, to allow an individual who is not party to a specific Convention adoption case, but who nonetheless has information about an agency or person, to complain directly to the Complaint Registry.

5. *Comment:* One commenter is concerned that the complaint procedures of subpart J do not establish a workable system for the filing, investigation, and resolution of complaints against agencies and persons. The commenter suggests that the Department specify the process for the timely investigation and resolution of complaints and further requests that agencies and persons have the opportunity to present evidence and receive proper notice of pending complaints against them.

Response: Subpart J outlines the general process for making, investigating, and resolving complaints about accredited agencies and approved persons. Each accrediting entity will be responsible for establishing written procedures for recording, investigating, and acting upon complaints, that are consistent with this subpart. The accrediting entity's procedures must be approved by the Department. Accrediting entities will make information about their Department-approved complaint procedures available upon request, and the Department will post information about using the Complaint Registry on the Department's Web site.

6. *Comment:* A commenter suggests that the Department establish a neutral fact-finding tribunal to investigate and document alleged adoption abuses and to implement the Convention as a mechanism to resolve complaints and disputes between party countries.

Response: With regard to alleged adoption abuses by agencies and persons, the courts will serve as a ''neutral tribunal'' for determining whether adverse actions are appropriate. With regard to disputes with other countries, the Department, as Central Authority, will address them as appropriate; the mechanisms for resolving such issues through diplomacy are outside of the scope of these regulations. The Department will use information collected by the Complaint Registry in the course of its ongoing diplomatic relations with Convention countries.

Section 96.70—Review of Complaints About Accredited Agencies and Approved Persons by the Complaint Registry

1. *Comment:* A commenter requests further clarification on the proposed Complaint Registry. The commenter believes that effective complaint mechanisms rely on clearly delineated serial escalation structures, where complainants, agencies/persons, or regulators may appeal to successively higher levels of administrative (and where applicable) judicial review. Other commenters support the complaint procedure as written.

Response: The Department agrees that effective complaint mechanisms require multiple levels of review. These regulations outline a process by which complainants involved in specific cases must file their complaints against an agency or person with that agency or person. If the complaint cannot be resolved through the agency's or person's internal complaint process, the complainant may file a complaint with the accrediting entity through the Complaint Registry pursuant to § 96.70. The Complaint Registry will make complaints available to the accrediting entity and to the Department. If an accrediting entity's investigation reveals that an agency or person is not in substantial compliance with these regulations, the accrediting entity can take an adverse action. The Department may suspend or cancel the accreditation or approval if it finds that an agency or person is substantially out of compliance with the standards in subpart F and that the accrediting entity has failed or refused, after consultation with the Department, to take action. We believe that these complaint procedures and enforcement steps provide enough levels of review to allow appropriate ''escalation'' and to enforce IAA compliance without being unduly cumbersome or too slow.

2. *Comment:* A commenter recommends that a complainant who is unsatisfied with the outcome of his or her complaint after a period of 30 days be permitted to file directly with the Complaint Registry. The commenter also recommends amending the provisions to allow a complainant to file with the Complaint Registry if a dispute has not been resolved within 60 days, or some other established time limit sufficient to weed out frivolous complaints and to address complaints that can be resolved amicably. Another commenter also stresses the importance of timeliness in the complaint process. One commenter is concerned that the proposed grievance procedure will be ''ineffectual, inadequate and self-interested,'' because the agencies and persons have no viable history of handling grievances in a timely and responsible manner.

Response: The Department has established complaint procedures and standards because of expressed concerns that some agencies and persons have not handled complaints effectively. Pursuant to § 96.41(c), all accredited agencies and approved persons must respond in writing to complaints within 30 days of receipt and must provide expedited review of complaints that are time-sensitive or that involve allegations of fraud. If the complaint cannot be resolved through the agency's or person's internal complaint process, then the complainant may file a complaint with the accrediting entity through the Complaint Registry. Also under § 96.69(b), if the complaint was resolved by an agreement to take action, but the primary provider, agency, or person failed to take the promised action within thirty days of agreeing to do so, the complaint may be filed with the accrediting entity through the Complaint Registry. Finally, § 96.71 also requires that the accrediting entity maintain procedures, including deadlines, for taking action upon complaints it receives from the Complaint Registry. This approach should be given a chance to work before further, more onerous, requirements are imposed on the assumption that agencies and persons will not resolve complaints efficiently and effectively.

3. *Comment:* A commenter requests that the Department adopt safeguards to screen out spurious or malicious complaints and to protect against manipulation of the complaint process.

Response: The Department believes that the constraints on filing complaints with accrediting entities will serve this safeguard function. In addition, once an accrediting entity receives a complaint from the Complaint Registry under § 96.70(b)(1), it will have authority to address spurious or other meritless complaints appropriately, and will share information publicly only about complaints against agencies or persons that have been substantiated, pursuant to § 96.92(a).

4. *Comment:* A commenter supports the creation of the Complaint Registry. It encourages the Department to consider following Norway's example by making the Complaint Registry an ombudsman service.

Response: The United States has followed a different model for implementation of the Convention, with the Department and accrediting entities having functions as provided in the IAA. The Complaint Registry is consistent with that structure.

5. *Comment:* One commenter thinks that the Complaint Registry should be easily accessible to potential complainants by telephone, postal mail, or electronic mail. Another commenter suggests the Complaint Registry should be available online.

Response: The Department agrees that it is important that the Complaint Registry be easily accessible to potential complainants as well as efficient, but also believes that the individuals making complaints must also be held initially responsible for making them in writing, not over the telephone. While the administrative details on how to access the Complaint Registry are not suitable for incorporation into these regulations, they will be posted on the Department's website, and the public will be able to access the Complaint Registry through multiple media.

6. *Comment:* Numerous commenters ask how the Complaint Registry will be set up. Others ask who will have ultimate oversight over the Complaint Registry. Other commenters want to know if the Complaint Registry will be established within the Department. Some commenters prefer that its precise functions be detailed in an agreement with the Department.

Response: The Department no longer contemplates that the Complaint Registry will be an independent entity with which the Department will have an agreement. Rather it will be a system established by the Department to assist the accrediting entities and the Department in their oversight functions. The relevant sections in subpart J, §§ 96.68–71, have been revised so that a party to an adoption case with a complaint against an agency or person may file it with the Complaint Registry after first seeking to resolve it with the agency or person. The Complaint Registry will receive and maintain information on complaints, and track the outcome of complaints. Addressing the complaints will be the responsibility of the accrediting entities and, in some circumstances, the Department. Every accredited agency or approved person will be required to give information to clients about their own complaint procedures as well as contact information for the Complaint Registry pursuant to § 96.41(a).

Subpart J describes the general duties and functions of the Complaint Registry. Once the Department has set up the Complaint Registry, information about the functions and processes of the Complaint Registry, as well as contact information, will be posted on the Department's website.

7. *Comment:* A few commenters want the Complaint Registry housed with the Federal Trade Commission (FTC).

Response: The IAA gives the Department and its designated accrediting entities the responsibility for all accreditation and approval functions. The Complaint Registry is not provided for by the IAA, but is being provided for by the Department in its discretion to assist the accrediting entities and the Department in performing their oversight functions under the IAA. While section 102(c) of the IAA explicitly states that the Department's functions may not be delegated to any other Federal agency, the Department notes that nothing would preclude the FTC from undertaking an investigation of an adoption service provider if the FTC had jurisdiction to do so under its own authorizing legislation (e.g., for false advertising).

8. *Comment:* One commenter asks that the Department provide some method to ensure that agencies and persons keep records of complaints against them and provide factual information about those complaints to any individual who requests it.

Response: Pursuant to § 96.41, accredited agencies and approved persons are required to keep records of complaints against them, and to provide reports to the accrediting entity and the Department on the complaints they received and how they were resolved. In addition, § 96.92 requires accrediting entities to maintain written records documenting complaints against accredited agencies and approved persons, and steps taken to resolve complaints. If a member of the public inquires about complaints against a particular agency or person, the accrediting entity must provide information on substantiated complaints.

9. *Comment:* A commenter that is a State licensing authority suggests that referrals be made by the accrediting entity to the applicable State licensing authorities when complaints involve agencies or persons who are also subject to State monitoring. This would facilitate a close working relationship and coordination between the accrediting entities and State licensing authorities.

Response: The Department agrees that communication between accrediting entities and State licensing authorities is important. The Department has revised § 96.72(b) to require the accrediting entity, after consultation with the Department, to refer to a State licensing authority or appropriate law enforcement authorities substantiated complaints that involve conduct in violation of Federal, State, or local law. The Department has also revised § 96.77(d) to require reporting to the appropriate State licensing authority of any adverse action that changes the accreditation or approval status of an agency or person. See also comment 1 on § 96.77.

10. *Comment:* One commenter states that the funding for the Complaint Registry should come from fees levied by the Department. Others want the Department to fund the Complaint Registry. Others want the provision permitting accrediting entities to collect and remit fees for the Complaint Registry deleted. Other commenters state that the fees for the Complaint Registry should not be levied collectively and that the cost of complaints should be borne exclusively by the agency or person in question. Commenters would prefer that information on fees be clear.

Response: The Department agrees that the Complaint Registry must be adequately funded. We therefore have retained the provisions that give us the discretion on how to fund the Complaint Registry. The Complaint Registry will assist both the Department and the accrediting entities, each of which has authority under the IAA to charge fees for its functions. How the Complaint Registry will actually be funded will depend on the overall costs of operating it, the availability of appropriated funds, and the proper allocation of costs between the Department and the accrediting entities.

11. *Comment:* One commenter recommends that every complaint be forwarded to a designated accrediting entity for review.

Response: The Complaint Registry will make complaints available to the accrediting entity and the Department. The Department anticipates that all properly filed complaints against accredited agencies and approved persons that raise an issue of compliance with the Convention, the IAA, or the regulations implementing the IAA will be forwarded to the appropriate accrediting entity, with the possible exceptions of sensitive law enforcement matters and complaints raised by government officials or a foreign Central Authority directly with the Department pursuant to § 96.69(d). Even if an accrediting entity is not given a particular complaint to review directly, it will be informed of all such complaints that are filed against an

agency or person that it has accredited or approved. In addition, pursuant to § 96.41, accredited agencies and approved persons are required to provide the accrediting entity and the Department with reports on the complaints they received and how they were resolved.

12. *Comment:* A commenter recommends that the Department add criteria to the regulations specifying the process for submitting complaints against the Complaint Registry. It suggests that such complaints be handled in the same way complaints about accrediting entities will be handled.

Response: The public may alert the Department, Bureau of Consular Affairs, of any dissatisfaction it has with the operation of the Complaint Registry. Because the Department no longer contemplates that the Complaint Registry will be an independent entity, but rather that it will be a system established by the Department to assist the Department and the accrediting entities, the Department does not anticipate that any procedures for filing complaints against the Complaint Registry will be necessary.

Section 96.71—Review of Complaints Against Accredited Agencies and Approved Persons by the Accrediting Entity

Comment: One commenter asks if the notifications of the outcome of complaint investigations made pursuant to § 96.71(c) (which in the proposed rule would have required notifications to the complainant, the Complaint Registry, and to any other entity that referred information), will be available to the public through a FOIA request. Commenter believes that such information will help the public protect itself and make informed decisions.

Response: The Department has ensured, in subpart M of these regulations, that the public may obtain information about the outcome of an accrediting entity's investigations into a complaint. Section 96.92(a) requires an accrediting entity to verify, upon inquiry from a member of the public, whether there have been any substantiated complaints against an accredited agency or approved person and, if so, to provide information about the status and nature of the substantiated complaint. Thus, members of the public may learn the outcome of an investigation that resulted in a substantiated complaint against an accredited agency or approved person. Section 96.91(b) also requires an accrediting entity to explain to the public the reasons for any withdrawal of temporary accreditation, or suspension, cancellation, or refusal to renew accreditation or approval, or any debarment.

Section 96.71(d) of the final rule requires that the accrediting entity enter information on the outcome of complaint investigations into the Complaint Registry established by the Department. The FOIA and its exceptions, along with other applicable Federal law such as the Privacy Act, will apply to this information to the extent that it constitutes a Department record.

Section 96.72—Referral of Complaints to the Secretary and Other Authorities

1. *Comment:* One commenter thinks that the regulations limit reports to the Department by an accrediting entity to complaints that demonstrate a pattern of serious, willful, grossly negligent, or repeated failures to comply with the standards of subpart F. The commenter requests that an accrediting entity report every complaint to the Department and make the investigation public.

Response: The regulations do not limit the reporting requirements of an accrediting entity to the serious infractions listed in § 96.72. Pursuant to § 96.93(a)(4), accrediting entities must make semi-annual reports to the Department that summarize, among other things, all substantiated complaints against accredited agencies and approved persons and the impact of such complaints on their accreditation or approval status. As well, under § 96.71, the accrediting entity is required to enter information into the Complaint Registry about the outcomes of investigations and actions taken on complaints. This information then will be available to the Department.

As well, § 96.92 does require an accrediting entity to respond to public inquiries regarding substantiated complaints against accredited agencies or approved persons, disclosing the status and nature of the complaint. The public, therefore, has access to information about complaints against agencies and persons.

2. *Comment:* One commenter suggests that the regulations should require accrediting entities to have an investigator familiar with relevant laws, as well as Section 501(c) of the Tax Code, on retainer to investigate complaints.

Response: Pursuant to § 96.24(a), accrediting entities must use evaluators that have expertise in intercountry adoption, standards evaluation, or management or oversight of a child welfare organization. Evaluators with this type of expertise are presumed to have familiarity with relevant laws. The Department does not think it necessary to specify in these regulations exactly what evaluators must know about relevant laws. The Department wants to leave flexibility in the regulations to allow accrediting entities to find and use the people they believe will be most qualified for the job of evaluating agencies and persons.

Subpart K—Adverse Action by the Accrediting Entity

Subpart K is organized in the same way as in the proposed rule, and includes § 96.74 (Scope); § 96.75 (Adverse action against accredited agencies or approved persons not in substantial compliance); § 96.76 (Procedures governing adverse action by the accrediting entity); § 96.77 (Responsibilities of the accredited agency, approved person, and accrediting entity following adverse action by the accrediting entity); § 96.78 (Accrediting entity procedures to terminate adverse action); § 96.79 (Administrative or judicial review of adverse action by the accrediting entity); and § 96.80 (Reserved).

The Department made a number of revisions to §§ 96.76—96.79 of this subpart, which are discussed below and at section II, subsection C of the preamble, above. Many of these revisions clarify the options that are available to an agency or person that is faced with an adverse action. A number of others relate to the transfer of Convention cases and adoption records.

Section 96.75—Adverse Action Against Accredited Agencies or Approved Persons Not in Substantial Compliance

1. *Comment:* A commenter requests that the Department specify whether imposing the adverse action of suspension means that an agency or person loses accreditation or approval and must transfer cases. If the purpose of suspension is to allow an entity a short period of time in which to take corrective action to comply with standards, the commenter recommends the category be renamed ''probation, with required corrective action'' and not include a requirement to transfer cases and records. Another commenter echoes the suggestion of a probationary period, recommending a one-time, three-month probationary period. The commenter also states that classifying corrective action as an adverse action, as § 96.75(b) does, is inconsistent with the typical use of the term ''corrective action;'' this commenter believes that requiring corrective action is typically a precursor to a decision to impose a penalty. These commenters also state that there is

insufficient due process for agencies or persons that are subject to adverse actions. Other commenters support the regulations as stated.

Response: The Department is not renaming, removing, or creating any category of adverse action in response to these comments, because section 202(b)(3) of the IAA specifies the types of adverse action an accrediting entity may take as including requiring corrective action; imposing sanctions; and refusing to renew, suspending or canceling accreditation or approval. The IAA does not specify ''probation'' as an adverse action. If an accrediting entity requires corrective action or imposes sanctions—two of the adverse actions specified by the IAA—and yet remains concerned about the agency's or person's compliance with the standards in subpart F, it may take one of the other types of adverse action provided for in the IAA—affecting the accreditation or approval status of the agency or person—and may require the agency or person to transfer any Convention cases or adoption records.

In response to the question on the effects of suspension, we note that, per § 96.77(b), ''suspension'' of accreditation or approval will require an agency or person to cease to provide adoption services in Convention adoption cases and consult with the accrediting entity to determine whether to transfer its Convention cases and adoption records. In the case of cancellation of accreditation or approval, however, Convention cases and adoption records must be transferred to other accredited agencies, approved persons, or State archives, according to the plans required by §§ 96.33(e) and 96.42(d).

In response to commenters' concerns about the due process available to agencies or persons facing adverse actions, the Department notes that § 96.76(b) of the rule provides that, prior to taking adverse action, the accrediting entity may advise the agency or person of the deficiencies that may warrant an adverse action, provide an opportunity to take corrective action, and recognize demonstrated compliance as curing the deficiency. If the accrediting entity does not communicate with the agency or person prior to taking the adverse action, § 96.76(b) requires the accrediting entity subsequently to allow the agency or person to demonstrate that the adverse action was unwarranted. We note, too, that agencies and persons may seek judicial review in Federal court of adverse actions in accordance with the IAA. Section 96.79 incorporates the IAA's provisions on judicial review. Please see the discussion on §§ 96.76 through 96.79 for a summary of comments on these sections, and the Department's detailed responses related to options to protest adverse actions.

2. *Comment:* A commenter objects to accrediting entities imposing sanctions regarding specific cases or specific Convention countries as described in § 96.75(e). Other commenters submitted conflicting comments about whether accrediting entities should be allowed to determine whether an agency or person has substantially complied with standards for accreditation or approval. Other commenters state that the Department should develop the procedures used by accrediting entities to impose adverse actions. Several commenters state that § 96.76 does not properly reflect section 204 of the IAA, regarding the imposition of adverse actions, and suggest that the language of the IAA be incorporated into the regulations to establish the standards for the imposition of adverse actions.

Response: To enforce the accreditation and approval standards laid out in subpart F of these regulations, the IAA gives both accrediting entities and the Department the authority to impose adverse actions. Section 202(b) of the IAA gives an accrediting entity authority to take adverse action when an agency or person is not in substantial compliance with the applicable requirements, and gives accrediting entities substantial flexibility in determining which adverse action is appropriate. The Department believes § 96.75 accurately reflects this flexibility in the IAA.

We are not removing the regulatory provisions that permit accrediting entities to impose sanctions related to a particular case or for a specific Convention country. Accrediting entities will be in the best position to learn of problems in specific cases or Convention countries and to determine if corrective actions are needed and what adverse action is appropriate. The methods developed by the accrediting entities to assess substantial compliance, pursuant to § 96.27, may also aid the accrediting entities in determining which adverse actions are appropriate for particular situations.

Finally, we believe this provision is consistent with section 204(b) of the IAA, which only requires the Department to suspend or cancel accreditation or approval in instances in which it finds that an agency or person is substantially out of compliance with the standards in subpart F and that the accrediting entity has failed or refused, after consultation with the Department, to take appropriate enforcement action. The Department may also debar agencies or persons in egregious circumstances, as specified in section 204(c). Subpart L of the rule contains a number of provisions incorporating IAA section 204's guidelines for Departmental oversight of agencies and persons.

Section 96.76—Procedures Governing Adverse Action by the Accrediting Entity

Comment: Several commenters recommend that the regulations clearly state that accrediting entities should be allowed to take adverse action without notice only in the case of ''clear and convincing evidence of an imminent danger to a child.'' Other commenters assert that if an adverse action is taken without notice, the accrediting entity must allow the accredited agency or approved person an opportunity after the notice is issued to provide information refuting that the adverse action was warranted.

Response: We have changed § 96.76 to address the commenters' concerns about providing notice to agencies and persons and to ensure that it is consistent with the IAA. Section 96.76(b) now provides that, before taking an adverse action, the accrediting entity may advise the agency or person of the deficiencies that may warrant adverse action; provide an opportunity for the agency or person to take corrective action; and recognize demonstrated compliance. This section also provides that, if the accrediting entity takes the adverse action without first providing notice, the accrediting entity must subsequently provide notice and an opportunity for the agency or person to refute that the adverse action was warranted. Thus the affected agency or person is always given an opportunity to be heard, either before or after adverse action is taken, and the accrediting entity is given the flexibility to act immediately if the circumstances so warrant. The Department thinks it important to leave the accrediting entities the discretion to balance the interests and risks at stake for each factual scenario, in determining at what point to allow the affected agency or person an opportunity to be heard. We have removed from the rule the example given in the parenthetical, to avoid any suggestion that the example is the sole circumstance in which prior notice would not be required.

Section 96.77—Responsibilities of the Accredited Agency, Approved Person, and Accrediting Entity Following Adverse Action by the Accrediting Entity

1. *Comment:* One commenter recommends that an accrediting entity be required to notify the applicable State approval or licensing authority of an adverse action against an accredited agency or approved person, to enhance coordination between accrediting entities and State licensing authorities.

Response: The Department agrees that, in order to comply with these regulations, accrediting entities will have to communicate well with State licensing authorities. Therefore, the Department is adding to § 96.77(d) the requirement that accrediting entities report to the appropriate State licensing authority, in addition to the Department (as was required by the proposed rule), any adverse actions they take that changes the accreditation or approval status of an agency or person. This notification requirement will be addressed more fully in the accrediting entity's agreement with the Department.

2. *Comment:* Several commenters recommend that the Department clarify the guidelines for the transfer of Convention cases due to suspension or cancellation of accreditation or approval. Many commenters ask whether prospective adoptive parent(s) will have a role in the decision to transfer their case. Another commenter thinks that accrediting entities should not play any role in determining whether and how to transfer pending cases or records, suggesting that it would not be appropriate for the accrediting entity to be involved in handling of individual cases or, given the financial benefit associated with the transfer, in selecting the agency or person to receive transferred cases.

Response: The Department is not eliminating the requirement that after cancellation and, in some instances after suspension, an agency or person must transfer its Convention cases under the oversight of the accrediting entity. Under §§ 96.33(e) and 96.42(d), the agency or person must have plans for transferring Convention cases and adoption records if it ceases to be able to provide adoption services. In the case of cancellation, the final rule requires agencies and persons to execute these plans. In the case of suspension, the agency or person must consult with the accrediting entity about whether to do so. Agencies and persons will have the main responsibility for working with families when transferring their Convention cases after suspension or cancellation but they will have to keep the accrediting entity informed about the process.

In the event that the agency or person is unable to transfer its Convention cases and/or adoption records consistent with these plans, the Department has amended §§ 96.77(b) and (c) to require the accrediting entity to inform the Department of the breakdown in the transfer plans, and to then assist the Department in coordinating efforts to help the agency or person with the transfer of pending Convention cases and adoption records. Such coordination will include efforts to identify other accredited agencies or approved persons to assume responsibility for the cases. This requirement ensures that the accrediting entity contributes its institutional knowledge about the agency or person, including knowledge related to the agency or person's transfer plan, to the process of transferring cases and records. This requirement also compels the accrediting entity to remain involved in overseeing case transfers that result from its adverse actions. It should not, however, put the accrediting entity in the position of independently assuming individual case transfer responsibilities and/or independently selecting alternate accredited agencies and/or approved persons to which cases will be transferred.

Section 96.78—Accrediting Entity Procedures To Terminate Adverse Action

Comment: Several commenters suggest that an agency, person, or other interested party should have the opportunity to challenge the accrediting entity's interpretation of a regulation or law. Further, some commenters express concern that the provision in § 96.67 that requires an agency or person to petition an accrediting entity to terminate an adverse action on the grounds that the deficiencies cited have been corrected before seeking judicial review in effect requires an agency or person to admit guilt. The commenters recommend that the Department establish an administrative mechanism through which an agency or person can challenge an adverse action it believes was unfounded or taken improperly.

Response: The Department notes that this rule provides several opportunities for agencies or persons to challenge the accrediting entity's interpretation of a regulation or law. Under § 96.76(b), as revised, an accrediting entity must allow an accredited agency or approved person the opportunity to submit information refuting that an adverse action would be or is warranted. The accrediting entity may withdraw, or choose not to impose, an adverse action based on this information. The IAA also provides for Federal judicial review of an accrediting entity's adverse action.

In addition, the Department has revised § 96.78 to clarify the responsibilities of the accrediting entity to provide an opportunity to seek termination of an adverse action. Section 96.78(a) now states that an accrediting entity must maintain internal petition procedures, approved by the Department, to give agencies and persons an opportunity to challenge adverse actions on grounds that the deficiencies underlying the adverse action have been corrected. The accrediting entity must now inform the agency or person of these procedures at the same time that it informs them of the adverse action itself. To ensure consistency with the fact that the IAA provides no other right to review of adverse actions at the accrediting entity level, the provision now also makes explicit that the accrediting entity is not required to maintain any other procedures to terminate or review adverse actions, and may make such procedures available only with the consent of the Department.

In response to commenters' concerns that this section requires an agency or person to assume ''guilt'' before challenging an adverse action, the Department has added § 96.78(f) to clarify that nothing in this section would prevent an accrediting entity from withdrawing an adverse action if it concludes that such an action was based on a mistake of fact or other error. Thus, an agency or person that believes it has done nothing wrong may ask an accrediting entity to withdraw an adverse action as unfounded or based on a factual error. Since this is not a formal administrative remedy, but just an option for conducting business that remains available, this approach could be taken at any time. While the agency or person will have no formal ''right'' to review, good business practices will presumably result in the accrediting entity in some cases choosing to change its prior decision. Alternatively, the agency or person may choose to challenge the action in district court. In contrast, an agency or person who wishes to demonstrate that it has taken corrective action to remediate an admitted deficiency may petition the accrediting entity to terminate the adverse action under the procedures required under § 96.78(a).

Please also see the responses to comments on §§ 96.79 and 96.84, related to review of accrediting entity decisions.

Section 96.79—Administrative or Judicial Review of Adverse Action by the Accrediting Entity

1. *Comment:* Several commenters raise concerns over the limits of judicial and/or administrative review of adverse action. Many commenters request that the Department create guidelines for the imposition of adverse actions that would include notices, standards of proof, hearings, an internal review process, and an appeal process to ensure due process for accredited agencies or approved persons.

Response: Under § 96.78(a), accrediting entities are required to maintain internal procedures, approved by the Department, to allow agencies or persons to petition for termination of adverse actions on the grounds that the deficiencies necessitating the adverse action have been corrected. This process for petitioning to terminate an adverse action on these limited grounds is the only internal review procedure set out in the IAA. If, after exhausting its remedies through the internal petition process, where applicable, an agency or person wishes to appeal the final decision of the accrediting entity, it may do so in Federal court as provided under the IAA. We have modified § 96.79(a) to reflect these parameters in a way that is consistent with the IAA.

The Department has also revised § 96.79(b) to emphasize that the IAA's limitation on administrative review of adverse actions by an accrediting entity in section 202(c)(3) of the IAA necessarily applies to both nonprofit accrediting entities and public domestic authorities that are designated as accrediting entities.

2. *Comment:* Some commenters maintain that the scope of judicial review after a denial of accreditation or approval as set forth in § 96.79(b) is unreasonably narrow. One commenter suggests that, if an agency or person is denied accreditation or approval, the agency or person should be allowed to apply to another accrediting entity.

Response: The IAA provides for judicial review, in a United States district court, of adverse actions, including requiring corrective action, imposing sanctions, or suspension of, cancellation of, or refusal to renew accreditation or approval. As discussed in the response to the comment on § 96.59 in subpart G, denial of accreditation or approval is not included within the scope of such review.

The Department has not changed the regulation to permit agencies and persons to apply to a different accrediting entity after being denied accreditation or approval. The Department does not want to encourage agencies and persons to ''shop around'' to different accrediting entities instead of bringing their services into compliance with these regulations. In addition, the Department wishes to avoid the drain on the limited resources of all accrediting entities that would result if a second accrediting entity would be required to go through the work of gathering documentation, doing site visits, and interviewing people in connection with an evaluation of an agency or person that another accrediting entity has already evaluated.

3. *Comment:* One commenter thinks that § 96.79(c), which requires an accredited agency or approved person to seek Federal judicial review of an adverse action through a Federal district court, will hinder it from taking on adoption cases with extenuating circumstances or special needs children.

Response: The provisions for judicial review in the IAA and § 96.79(c) are intended as a benefit, not a burden, to agencies and persons, to ensure that they are treated fairly when subjected to adverse actions. Sections 96.76 and 96.78 also now clearly provide opportunity for an agency or person to seek reversal of an adverse action without going to Federal court, which may address the commenter's apparent concern with the time and cost of Federal litigation. This provision should not in any way discourage agencies or persons from performing adoption services for special needs children in Convention countries.

4. *Comment:* One commenter requests that the Department explain the significance of IAA section 202(c)(3) of the IAA, which provides for judicial review of adverse actions in Federal courts under 5 U.S.C. 706 of the Administrative Procedure Act (APA), and treats an accrediting entity as an ''agency'' under 5 U.S.C. 701 for the purpose of this review. The commenter suggests that its ability and willingness to act as an accrediting entity will be seriously impacted by this provision, along with that of other private organizations and public authorities.

Response: The right provided in section 202(c)(3) of the IAA to challenge adverse actions in Federal courts is an express exception to section 504 of the IAA's mandate that the Convention and the IAA shall not be construed to create a private right of action, except where otherwise provided. Section 706 of the APA sets out the legal standards by which a Federal court may review decisions made by agencies, as defined in the APA, and the procedures which the agencies used to make those decisions. The relief sought in an APA action is generally reversal or modification of an administrative action, and money damages are not available. The statement that, for the purposes of challenges to adverse actions, an accrediting entity will be considered a 5 U.S.C. 701 agency, brings all accrediting entities (private nonprofit or public) into the scope of ''agencies'' against whom APA actions may be brought. Thus, for example, 5 U.S.C. 706(2)(A) would allow a Federal court to set aside an adverse action that had been taken ''in excess'' of an accrediting entity's authority under the IAA.

5. *Comment:* Two commenters recommend that the Department include a provision for alternative dispute resolution, given the potential financial burden of Federal court litigation. According to one of the commenters, this could be accomplished by allowing accrediting entities to utilize dispute resolution clauses in their contracts with agencies or persons seeking accreditation or approval.

Response: Section 202(c)(3) of the IAA expressly authorizes Federal judicial review of certain enumerated adverse actions taken by an accrediting entity, and section 202(c)(2) expressly prohibits administrative review of an adverse action by an accrediting entity (except to the extent review is provided under section 202(c)(1) to determine if deficiencies have been corrected). The IAA is silent on whether accrediting entities and agencies and persons may agree to alternative dispute resolution procedures. We are not including in the regulations a provision that permits designated accrediting entities to mandate that agencies or persons agree to binding arbitration, or agree to use other alternative dispute resolution mechanisms; such an approach could lead to agencies or persons feeling coerced. By the same token, we are not ruling out the option that accrediting entities and agencies and persons may mutually agree to alternative dispute mechanisms with respect to a particular dispute.

Subpart L—Oversight of Accredited Agencies and Approved Persons by the Secretary

Subpart L is organized in the same way as in the proposed rule, and includes § 96.81 (Scope); § 96.82 (The Secretary's response to actions by the accrediting entity); § 96.83 (Suspension or cancellation of accreditation or approval by the Secretary); § 96.84 (Reinstatement of accreditation or approval after suspension or cancellation by the Secretary); § 96.85 (Temporary and permanent debarment

by the Secretary); § 96.86 (Length of debarment period and reapplication after temporary debarment); § 96.87 (Responsibilities of the accredited agency, approved person, and accrediting entity following suspension, cancellation, or debarment by the Secretary); § 96.88 (Review of suspension, cancellation, or debarment by the Secretary); and § 96.89 (Reserved).

We have modified § 96.83(a) and § 96.85(b) to clarify that the Department alone has the discretion to determine whether the conditions for taking action under §§ 96.83 and § 96.85 have been satisfied. In addition, the Department has added new §§ 96.85(b)(2)(ii) and (iii), incorporating directly the provisions of section 204(e) of the IAA, which specifies as grounds for debarment certain egregious failures to comply with home study requirements. Other changes, in particular changes to §§ 96.84, 96.86, and 96.87 paralleling changes made in subpart K, are described below.

Section 96.81—Scope

1. *Comment:* Two commenters recommend that oversight of agencies and persons should be moved from accrediting entities and the Department to the FTC. A commenter is concerned that the Department lacks expertise and interest in overseeing agencies and persons.

Response: The explanation given in the response to comment 7 on § 96.70 above, also applies to this comment. The Department is committed to identifying and working with qualified accrediting entities to oversee agencies and persons.

2. *Comment:* One commenter suggests that the Department create a centralized online database with information on the accreditation status of all agencies and persons.

Response: Accrediting entities are required to maintain and make available to the public information on accredited agencies and approved persons, such as their specific accreditation/approval status. (See §§ 96.91 and 96.92). The Department will make available, on its website, the identities of the accrediting entities.

Section 96.82—The Secretary's Response to Actions by the Accrediting Entity

Comment: Several commenters believe that imposing adverse actions on agencies and persons without notification is problematic. They think that § 96.82(b) allows the Department to inform the Hague Permanent Bureau of an adverse action when the party in question has not had an opportunity to contest the decision from the accrediting entity. To ensure that the rights of agencies and persons are protected, commenters request creation of a detailed appeal process with notice and hearing.

Response: In order for the Hague Permanent Bureau to have an accurate list of accredited agencies and approved persons, consistent with our obligations under Article 13 of the Convention, the Hague Permanent Bureau must be notified of changes in status that result from adverse actions, even when the adverse action has been taken without prior notice. Therefore we are not altering § 96.82(b) in response to this comment. We note that §§ 96.84 and 96.86 correspondingly require the Department to notify the Hague Permanent Bureau, as appropriate, when an adverse action has been terminated or withdrawn. For a discussion of the issue of notice in the context of adverse action taken by an accrediting entity, please see the response to the comment on § 96.76.

Section 96.83—Suspension or Cancellation of Accreditation or Approval by the Secretary

Comment: Commenters suggest that the third provision in § 96.83(b), stating that the Department may suspend or cancel accreditation or approval if such action ''will protect the interests of children'' should be listed first, ahead of furthering U.S. foreign policy or national security interests and protecting the ability of U.S. citizens to adopt children under the Convention.

Response: The listing of grounds on which the Department may act is not intended to convey their relative importance, or any sequence in which the grounds will be considered. The Department, nevertheless, made the suggested change. A key objective of both the Convention and the IAA is to ensure that standards are in place that protect the best interests of children.

Section 96.84—Reinstatement of Accreditation or Approval After Suspension or Cancellation by the Secretary

Comment: One commenter opposes the provision allowing an agency or person to apply for reinstatement of accreditation or approval.

Response: Section 204(b)(2) of the IAA explicitly allows applications for reinstatement of accreditation or approval by agencies or persons in situations in which the Department is satisfied that the deficiencies that necessitated cancellation have been corrected. Section 96.84 of the rule tracks these provisions of IAA section 204(b)(2), as well as its provisions on terminating a suspension. The comment nevertheless prompted the Department to add language to § 96.84(a) to specify the narrow grounds on which the agency or person can petition the Department for relief—namely, that deficiencies necessitating the suspension or cancellation have been corrected. Moreover, we note that § 96.84(a) requires that an agency or person authorized to reapply for accreditation or approval generally must reapply to the accrediting entity that handled its prior application, to ensure that the agency or person will be subject to rigorous evaluation.

The Department has also added § 96.84(b) to make clear that nothing in this section prevents the Department from withdrawing a cancellation or suspension upon a finding that the action was based on a mistake of fact or otherwise in error. Please see also the discussion in response to comments on § 96.78.

Section 96.85—Temporary and Permanent Debarment by the Secretary

Comment: The only comments specific to § 96.85 noted agreement with the debarment provisions and the language that defines when the Department is to take action for debarment.

Response: No response is required to these comments; as noted in the introduction to the discussion of subpart L, § 96.85 now incorporates the provisions of section 204(e) of the IAA on debarment for certain egregious failures to comply with home study requirements.

Section 96.86—Length of Debarment Period and Reapplication After Temporary Debarment

Comment: The comments on § 96.78 expressing concern that the proposed rule would force an agency or person to admit guilt before challenging an adverse action were also made with respect to this section.

Response: The Department has added § 96.86(c) to clarify that this section does not prevent the Department from withdrawing a debarment if it was based on factual or other error. Please see also the discussion responding to comments on § 96.78.

Section 96.87—Responsibilities of the Accredited Agency, Approved Person, and Accrediting Entity Following Suspension, Cancellation, or Debarment by the Secretary

Comment: Some commenters expressed concern about the case transfer provisions in the rule.

Response: As discussed above, the Department has modified § 96.87 to reflect the fact that, if accreditation or approval is cancelled, the plans required by §§ 96.33(e) and 96.42(d) will govern any transfer of Convention cases and adoption records. As with § 96.77, the provision has been modified to require the accrediting entity to assist the Department in helping the agency or person to transfer its Convention cases and adoption records if the agency or person is unable to transfer Convention cases and adoption records as planned. Please see the response to comment 2 on § 96.77 for further explanation.

Section 96.88—Review of Suspension, Cancellation, or Debarment by the Secretary

Comment: Commenters express concern about the absence of administrative review and the possibility of ''a few entities or individuals being able to essentially shut down an agency with no recourse.'' Commenters request that a ''full review board'' for the Department's adverse actions be put in place.

Response: The IAA does not provide for administrative review of suspension, cancellation or debarment by the Department, except to the extent that section 204(b)(2) of the IAA provides that the Department may terminate a suspension or authorize re-application for accreditation or approval if it is satisfied that the deficiencies underlying a suspension or cancellation of accreditation or approval have been corrected. Reinstatement in such circumstances is provided for under § 96.84 of the rule, and the Department has modified § 96.88(a) to clarify the point that this is the only non-judicial review procedure available. Sections 96.84(b) and 96.86(c) have been added to clarify that the Department may withdraw a cancellation, suspension, or debarment if the Department concludes that the action was based on a mistake of fact or was otherwise in error. These provisions are consistent with the overall structure of the IAA.

Subpart M—Dissemination and Reporting of Information by Accrediting Entities

Subpart M is organized in the same way as in the proposed rule, and includes § 96.90 (Scope); § 96.91 (Dissemination of information to the public about accreditation and approval status); § 96.92 (Dissemination of information to the public about complaints against accredited agencies and approved persons); and § 96.93 (Reports to the Secretary about accredited agencies and approved persons and their activities); and § 96.94 (Reserved).

Sections 96.92–96.93 have been revised in response to public comment, as described below. In addition, while § 96.91 of the proposed rule would have required an accrediting entity to provide a summary of the accreditation or approval study of an agency or person upon request, after further consideration of the burden and cost impact on accrediting entities, we have eliminated this provision. We believe that the other information accrediting entities are required to give the public is sufficient to allow prospective adoptive parent(s) to make informed decisions, and eliminating this requirement will assist in minimizing accreditation fees.

Section 96.91—Dissemination of Information to the Public About Accreditation and Approval Status

1. *Comment:* Several commenters suggest that information about accreditation and approval status should be posted on the Department's website. One commenter also suggests that information be made available by e-mail upon request.

Response: Information about accreditation and approval status will be available through the accrediting entities. The Department will have information about all accrediting entities posted on its website. Also, the Department will send the names of accredited agencies and approved persons to the Hague Permanent Bureau for dissemination on its website. These arrangements are consistent with the respective roles of the accrediting entities and the Department under the IAA.

2. *Comment:* Commenters request that the Department clarify the scope and methods to be used to disclose information to the public regarding accredited agencies and approved persons under § 96.91. One commenter further suggests that an accrediting entity be afforded the discretion to make the information that it is required to make available on a quarterly basis under § 96.91(a), available on a more regular basis.

Response: The Department does not believe that it is necessary to set out in the regulation the methods which accrediting entities may use to meet the disclosure requirements of § 96.91. The Department expects to address this issue in the agreements with the accrediting entities.

Once the Convention has entered into force for the United States, accrediting entities will be required to make available to the public information about accredited agencies and approved persons on a quarterly basis, pursuant to § 96.91(a). Section 96.91(a) does not prohibit accrediting entities from making such information available on a more frequent basis. The information that accrediting entities will be required to disclose to the public quarterly includes the names and contact information for each agency and person it has accredited or approved and the names of agencies and persons to which it has denied accreditation or approval that have not subsequently been accredited or approved. Accrediting entities will also have to provide the names of those who have been subject to suspension, cancellation, or refusal to renew accreditation or approval; those who have had their temporary accreditation withdrawn; or who have been debarred, as well as any information specifically authorized in writing by the accredited agency or approved person to be disclosed to the public.

In addition, upon request, accrediting entities will have to make available to the public confirmation of whether a specific agency or person has been subject to suspension, cancellation, refusal to renew, or withdrawal of temporary accreditation or approval or has been debarred, and a brief statement of the reasons for the action. Upon request, accrediting entities will also have to confirm whether an agency or person has a pending application for accreditation or approval and the status of the application. Finally, once the Convention has entered into force for the United States, accrediting entities will be required to disclose information, upon request, on substantiated complaints under § 96.92.

3. *Comment:* One commenter suggests that accredited agencies and approved persons should provide information required under subpart M to parent(s) immediately upon initiating a relationship. Another commenter thinks that agencies or persons should be required to disclose any adverse actions or complaints directed against them to parent(s) before a referral of a child is made, so that prospective adoptive parent(s) can make an informed decision regarding that agency or person. Another commenter supports the provision as written.

Response: The Department is not revising § 96.91 to apply to agencies and persons as well as to accrediting entities. The purpose of this provision is to allow clients, if they wish, to get critical information from one source—the accrediting entities—instead of by seeking information from each individual agency or person. We believe that requiring accrediting entities to provide information to the public about accredited agencies and approved persons will assist the public in making informed decisions when choosing an adoption service provider. Clients will, of course, also remain free to seek information directly from agencies and persons.

We note also that § 96.39 of subpart F sets forth standards on information disclosure by agencies and persons to the general public and to prospective clients, and § 96.41 sets forth standards requiring agencies and persons to provide information on complaint procedures to clients.

4. *Comment:* A commenter recommends adding a fourth provision under § 96.91(b) that requires that each accrediting entity make available to individual members of the public upon specific request any information concerning a specific agency or person except: (A) information identifying prospective or actual adoptive parents, birth parents or adoptees; (B) complaints which have been determined to be false or unsubstantiated; and (C) complaints being investigated by the Complaint Registry or accrediting entity that were filed less than six months earlier.

Response: Requiring accrediting entities to provide ''any'' information concerning a specific agency or person would be too burdensome on accrediting entities. While subpart M is intended to help clients make informed decisions about accredited agencies and approved persons, it only indirectly furthers the main purpose of the IAA and these implementing regulations, which is to ensure that agencies and persons comply with the Convention and the IAA. Thus, we have not modified subpart M to impose such a public reporting requirement on accrediting entities.

Section 96.92—Dissemination of Information to the Public About Complaints Against Accredited Agencies and Approved Persons

Comment: Several commenters believe that requiring the accrediting entity to disclose information on both substantiated and unsubstantiated complaints against an agency or person could promote rumors, speculation, or otherwise undue prejudice toward that agency or person. Commenters recommend that only information about substantiated complaints should be made available to the public.

Response: The Department has revised § 96.92 to require reporting only of substantiated complaints. The Department believes that requiring accrediting entities to report to the public only substantiated complaints against an agency or person is sufficient protection for potential clients. It will also reduce the reporting burden on accrediting entities and may, therefore, reduce the cost of accreditation or approval.

Section 96.93—Reports to the Secretary About Accredited Agencies and Approved Persons and Their Activities

Comment: One commenter recommends that reports to the Department about accredited agencies and approved persons should be made public because the information contained would be useful to prospective adoptive parent(s) who are evaluating those agencies and persons. Others are concerned about the cost and burden of requiring accrediting entities to make quarterly reports to the Department.

Response: Some of the information contained in an accrediting entity's report to the Department will be available to the public, upon request to the accrediting entity, pursuant to §§ 96.91 and 96.92. We do not think it necessary or appropriate to include further provisions addressing when and how any other portions of the accrediting entities' reports to the Department would be available to the public, because such disclosures would be covered by Federal laws on access to records and information.

In response to general concerns about the potential impact of the reporting requirements on accreditation fees, we have modified § 96.93 so that the reports to the Department under § 96.93(a) are required on a semi-annual rather than a quarterly basis.

Subpart N—Procedures and Standards Relating to Temporary Accreditation

Subpart N is organized in the same way as in the proposed rule, and includes § 96.95 (Scope); § 96.96 (Eligibility requirements for temporary accreditation); § 96.97 (Application procedures for temporary accreditation); § 96.98 (Length of temporary accreditation period); § 96.99 (Converting an application for temporary accreditation to an application for full accreditation); § 96.100 (Procedures for evaluating applicants for temporary accreditation); § 96.101 (Notification of temporary accreditation decisions); § 96.102 (Review of temporary accreditation decisions); § 96.103 (Oversight by accrediting entities); § 96.104 (Performance standards for temporary accreditation); § 96.105 (Adverse action against a temporarily accredited agency by an accrediting entity); § 96.106 (Review of the withdrawal of temporary accreditation by an accrediting entity); § 96.107 (Adverse action against a temporarily accredited agency by the Secretary); § 96.108 (Review of the withdrawal of temporary accreditation by the Secretary); § 96.109 (Effect of the withdrawal of temporary accreditation by the Secretary); § 96.110 (Dissemination and reporting of information about temporarily accredited agencies); and § 96.111 (Fees charged for temporary accreditation).

The Department has made a number of changes to the provisions of subpart N to parallel changes made in the subparts of the rule that apply to accreditation and approval. As described below, we have also removed from § 96.103 language that was duplicative of language in § 96.111, and have further clarified how fees may be charged for site visits.

Section 96.95—Scope

Comment: One commenter believes that the temporary accreditation process goes against the intention of Congress and does not address the needs of small agencies for which the provision was intended. The commenter states that the IAA used the term ''registration'' to describe the ''phase-in'' process, which would imply less time and expense than temporary accreditation.

Response: We have not changed the provisions on temporary accreditation because we believe they are consistent with both the IAA and the Convention. The IAA does use the term ''registration'' in the heading of the section on temporary accreditation, but it is clear that, regardless of what it is called, the short-term transitional accreditation process is to be more than a mere sign-up procedure. (Allowing agencies to conduct Convention adoptions based on a mere sign-up procedure would be difficult, if not impossible, to justify as consistent with the Convention.) The IAA criteria for applying for temporary accreditation are less comprehensive than those required for full accreditation, yet the statute still requires that an agency demonstrate basic competency to perform Convention adoptions.

The Department deliberately uses the term temporary accreditation, rather

than ''registration,'' to highlight that temporary accreditation, as envisioned in the IAA, is a stepping-stone to full accreditation; temporary accreditation is meant to allow small agencies a short period of time to gather the information and resources necessary to achieve full accreditation. Temporary accreditation is not a permanent, ongoing status for small agencies, but is available only as the Convention first enters into force for the United States, and is a status limited to, at most, two years. Eventually, small agencies must meet the full accreditation standards in subpart F to provide adoption services in Convention cases, or choose to provide adoption services in Convention cases only as supervised or exempted providers.

The eligibility requirements for temporary accreditation are more detailed than the broadly worded criteria in the IAA, but they are all based in the statute. For example, section 203(c)(3)(E) of the IAA requires that an agency that wishes to get temporary accreditation show that it ''has not been found to be involved in any improper conduct relating to intercountry adoptions.'' The Department's regulations at § 96.96(a)(5) describe what agency behavior would be considered ''improper conduct'' including, (i) a suspension of its State license; (ii) a recent finding of fault or liability in an administrative or judicial action; or (iii) a recent finding of criminal fraud or financial misconduct. These requirements, together with the performance standards required to maintain temporary accreditation set out in § 96.104, are still significantly less involved than the standards for full accreditation. Given the difference between the requirements for full and temporary accreditation, it should take small agencies less time and expense to obtain temporary accreditation than it would to get full accreditation. The Department believes that the temporary accreditation framework will help maintain a diverse array of adoption service providers that are available to place children eligible for adoption and to assist birth families and prospective adoptive families. At the same time, the temporary accreditation framework will help to ensure that temporarily accredited agencies can still comply with the basic provisions of the Convention and the IAA.

Section 96.96—Eligibility Requirements for Temporary Accreditation

1. *Comment:* Commenters support the temporary accreditation provision, particularly to the extent it may benefit small agencies.

Response: No response is required to these comments.

2. *Comment:* One commenter states that the current threshold for the number of cases in which adoption services are performed by an agency seeking temporary accreditation does not offer sufficient relief for small agencies. Many commenters request that the threshold for temporary accreditation be based solely upon the number of Convention cases. Other commenters want the threshold to be raised to 200 cases for one year or 100 cases for two years of temporary accreditation.

Response: The threshold number of cases for temporary accreditation is established by section 203(c) of the IAA, which provides that an agency can get temporary accreditation for a period of one year if it has ''provided adoption services in fewer than 100 intercountry adoptions in the preceding calendar year,'' and for two years if it has ''provided adoption services in fewer than 50 intercountry adoptions in the preceding calendar year.''

Consistent with the IAA, all ''intercountry adoptions,'' will count toward the threshold number. Prior to entry into force of the Convention for the United States, no Convention adoptions would have been performed in the United States, regardless of the size of the agency. There is also no basis for reading the term ''intercountry adoptions'' in this provision of the IAA to mean ''intercountry adoptions that would have been Convention adoptions had the Convention been in force in the United States at the time they were performed.''

3. *Comment:* One commenter strongly suggests that there should be no extensions of temporary accreditation, under any circumstances.

Response: The rule does not allow any such extensions. Under the IAA, temporary accreditation is a one-time status that is available only for a period of time immediately after the Convention enters into force.

4. *Comment:* One commenter requests clarification of what constitutes a small agency under § 96.96(a)(1). It is an agency that arranges approximately 20 adoptions per year, but that also conducts over 100 home studies. It questions whether it would qualify as a small agency, given that home studies are considered an adoption service.

Response: After careful review, we have concluded that an agency that arranges 20 adoptions and conducts over 100 home studies a year would not qualify for temporary accreditation. Section 203(c) of the IAA provides expressly that agencies that have ''provided adoption services in fewer than 100 intercountry adoptions'' in the calendar year preceding entry into force of the Convention can be temporarily accredited for a one year period (or for a two year period, if performing adoption services in fewer than 50 intercountry adoptions). As the commenter correctly notes, ''adoption service'' is defined in section 3 of the IAA, and is used throughout the IAA, to include home studies. Accordingly, the commenting agency is providing one of the six enumerated ''adoption services'' in over 100 cases. Assuming these services were provided by the agency in the calendar year preceding entry into force of the Convention, the agency would not qualify for temporary accreditation.

The fact that such an agency cannot qualify for temporary accreditation does not mean that it must pursue full accreditation to continue its work, however. After the Convention enters into force, it could act as an ''exempted provider'' in those cases in which the agency performs only home studies, and it could act as a supervised provider in those few Convention adoptions in which it performs additional adoption services.

The Department considered whether, notwithstanding its plain language, section 203(c) of the IAA could be construed to exclude home studies from adoption services on the possible ground that, after the Convention comes into force, providers that perform only a home or child background study, and no other adoption service in a case, will be excepted by IAA section 201(b) from the section 201(a) requirement that all adoption services be provided by an accredited, approved, or supervised provider. We are satisfied that the answer to this question is no. As just explained, the plain language of section 203(c) directs us to consider all cases in which adoption services are provided when determining eligibility for temporary accreditation, and home studies are an adoption service. While section 201(b) exempts home or child background study providers from meeting the accreditation, approval, or supervision requirement when the home or child background study is the only service they provide in a case, the exemption does not change the fact that a home or child background study is an adoption service. Instead the exemption recognizes special circumstances in which a provider will not be required to be accredited, approved or supervised. Accreditation, approval, or supervision of home or child background study providers is still required if the home or child background study is performed in

conjunction with other adoption services on a case. Moreover, the purpose of IAA section 203(c) is to determine who is qualified for temporary accreditation based on the historic volume of cases in which an applicant has provided adoption services prior to entry into force of the Convention. This retrospective rule has an entirely different function than the forward-looking rule for determining, under IAA section 201, which providers need to be accredited, approved, or supervised after entry into force of the Convention. The fact that providers of home studies in some circumstances do not need to be accredited, approved, or supervised after entry into force is not inconsistent with the fact that home studies are counted as ''adoption services'' for the purposes of determining whether an agency that wishes to become accredited can first be temporarily accredited.

Accordingly, assuming the commenter performs its current volume of adoption services in the year preceding entry into force of the Convention, the options available to the commenter under the statute and regulations will be either to obtain full accreditation, or to operate as an exempted or supervised provider.

5. *Comment:* A commenter suggests that limiting eligibility to agencies that have provided adoption services for three years prior to the transitional application deadline (TAD) will exclude small agencies that have recently received their State licenses. Others think requiring a license for five years prior to the TAD is more appropriate. One commenter suggests that temporary accreditation should be available to any group that wishes to form a new adoption agency, otherwise the creation of new agencies will be discouraged, and the number of agencies available to prospective adoptive parent(s) will be severely limited.

Response: The requirement that an agency must have provided adoption services for at least three years prior to the TAD before it is eligible for temporary accreditation was taken directly from section 203(c)(3)(B) of the IAA. The Department believes that it is unnecessary—and would be inconsistent with the purpose of the temporary accreditation provisions of the IAA—to require by regulation that small agencies have provided services for a specific time period longer than 3 years.

6. *Comment:* Some commenters suggest that agencies should be subject to more stringent requirements for temporary accreditation than those in the proposed rule.

Response: The Department is not modifying the standards for temporary accreditation based on this comment. We believe that they are consistent with the IAA's provisions on temporary accreditation and strike the proper balance between ensuring that agencies can provide adoption services in the manner required under the IAA and the Convention and minimizing the impact on small agencies.

Section 96.98—Length of Temporary Accreditation Period

Comment: One commenter suggests that the period of temporary accreditation be one year, not two years.

Response: The Department does not have the authority to vary the lengths of the temporary accreditation periods from the periods set in the IAA. Section 203(c) of the IAA provides that an agency can get temporary accreditation for a period of one year if it has ''provided adoption services in fewer than 100 intercountry adoptions in the preceding calendar year,'' and for two years if it has ''provided adoption services in fewer than 50 intercountry adoptions in the preceding calendar year.''

Section 96.100—Procedures for Evaluating Applicants for Temporary Accreditation

Comment: A commenter supports allowing accrediting entities to use site visits to determine an agency's eligibility for temporary accreditation, but the commenter recommends that accrediting agencies rely primarily on documentation when evaluating applications for temporary accreditation in order to minimize the burden and cost for small agencies.

Response: The Department agrees with the thrust of this comment but does not believe the regulation should be modified to specifically require primary reliance on documentation. The rule, as written, strikes an appropriate balance between minimizing the burden and cost for small agencies to get temporarily accredited and ensuring that temporarily accredited agencies can provide satisfactory adoption services to families. If the accrediting entity is satisfied, after reviewing the documentation submitted by an agency, that an agency is qualified for temporary accreditation, then § 96.100(b) permits the accrediting entity to forego a site visit.

Section 96.102—Review of Temporary Accreditation Decisions

Comment: Several commenters raise concerns over the limits of judicial and/or administrative review of a denial of full or temporary accreditation.

Response: These rules treat denial of temporary accreditation the same as the denial of an initial application for full accreditation or approval. For a discussion of why this rule does not permit review of initial denials of full or temporary accreditation, please see the response to comments on § 96.59.

Section 96.103—Oversight by Accrediting Entities

1. *Comment:* Several commenters think that the provision in § 96.103(b) in the proposed rule allowing the accrediting entity to assess additional fees for actual costs incurred is arbitrary because the accrediting entity, at its discretion, can visit the agency at the agency's expense. One commenter suggested that the Department set parameters for extraordinary cases to protect agencies from unnecessary fees.

Response: The Department does not believe it is appropriate to assume that designated accrediting entities will arbitrarily conduct site visits in order to generate fees. Accreditation fees may not exceed actual costs, so conducting site visits will not be a financial windfall for accrediting entities.

The Department has, however, eliminated from § 96.103 language duplicative of § 96.111's authorization of charges and fees related to site visits. The ability of an accrediting entity to charge fees for a site visit is unaffected by this change. The Department has also added language to § 96.111(a) to clarify that an accrediting entity may require the payment of estimated additional fees for a site visit in advance, subject to a refund of any overcharge.

2. *Comment:* One commenter suggests that the Department itself closely monitor small agencies.

Response: The accrediting entities will have primary oversight responsibility for agencies that they have granted temporary accreditation. The Department, nevertheless, retains oversight responsibility for agencies of all sizes. The Department has independent authority under § 96.107 to withdraw an agency's temporary accreditation if the agency is substantially out of compliance with the standards in § 96.104 and the accrediting entity has failed or refused to take appropriate enforcement action, or if the Department finds such action will protect the interests of children, further U.S. foreign policy or national security interests, or protect the ability of U.S. citizens to adopt children under the Convention.

Section 96.105—Adverse Action Against a Temporarily Accredited Agency by an Accrediting Entity

Comment: Comments pertaining to §§ 96.76 and 96.77 also relate to this temporary accreditation counterpart.

Response: Changes made to § 96.105 and § 96.109(c) were made to conform to the approach taken in § 96.76. Please see the discussion under §§ 96.76 and 96.77 for relevant comments and responses.

Section 96.106—Review of the Withdrawal of Temporary Accreditation by the Accrediting Entity

Comment: Comments pertaining to § 96.79(a) also relate to this section as its temporary accreditation counterpart.

Response: The Department made minor changes to § 96.106(a) to conform with the approach taken in § 96.79(a).

Section 96.107—Adverse Action Against a Temporarily Accredited Agency by the Secretary

Comment: Comments pertaining to § 96.83 also relate to this section as its temporary accreditation counterpart.

Response: The Department made conforming changes to § 96.107(b) consistent with changes that it made to § 96.83(b). Please see the discussion under § 96.83 for the relevant comment and response.

Section 96.109—Effect of the Withdrawal of Temporary Accreditation by the Accrediting Entity or the Secretary

Comment: Comments pertaining to §§ 96.77(b) and (c) also relate to this section as its temporary accreditation counterpart.

Response: The Department made conforming changes to § 96.109(a) and (b) consistent with changes that it made to § 96.77(b) and (c). Please see the discussion under § 96.77(b) for relevant comments and responses. In addition, the Department clarified the related performance standard, in § 96.105(k), to provide that the closure plan must include provisions for organized closure and reimbursements to clients, mirroring a change made to § 96.33(e). Please see also the response to comment 9 on § 96.33.

V. Regulatory Review

A. Regulatory Flexibility Act/Executive Order 13272: Small Business

The Department has reviewed the final rule's impact on small agencies and persons in accordance with the final regulatory analysis requirements in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The RFA requires an agency to perform a final regulatory flexibility analysis at the time that a rule is finalized to determine the regulatory impact of the rulemaking on small entities. However, if the agency does not believe that the rule will have a significant economic impact on a substantial number of small entities the agency may publish a certification in lieu of a regulatory analysis, provided that the certification is accompanied by a factual basis. As stated in the certification for the proposed rule there are between 420 and 600 adoption service providers, the vast majority of which are small, that may have to comply with this rulemaking. Accordingly, the rule will impact a substantial number of small entities. However, for the reasons provided below, the Department does not believe that the economic impact will be significant.

At the request of the Small Business Administration (SBA), we included in the notice of proposed rulemaking the following questions on small entity impact for public comment: (1) Will most small agencies be eligible for temporary accreditation under the criteria provided in subpart N? (2) How many agencies are likely to seek temporary accreditation rather than full accreditation? (3) What are the accrediting entities likely to charge the agencies for the temporary accreditation process? (4) What are the estimated costs agencies will have to expend to comply with the standards in subpart N? (5) Will small agencies be negatively impacted if they are unable to qualify for temporary accreditation? We received no comments responding specifically to the questions posed by the SBA, but we summarize and address below the comments which we did receive related to the impact on small entities of this rule:

Comment: Six commenters expressed concern about accreditation fees and believe that accreditation fees could range from $45,000 to $100,000 per applicant.

Response: Consistent with the IAA, accrediting entities will be authorized to charge agencies and persons fees to cover the cost of conducting the accreditation process, which in the case of full accreditation or approval will include: (1) Reviewing an applicant's written application; (2) verifying the information the applicant provided by examining underlying documentation; (3) considering written complaints; (4) conducting off-site or in-person interviews; (5) consulting with relevant State licensing authorities; (6) conducting a site visit; and (7) taking adverse action and defending any legal challenges to enforcement measures. Providing for these core duties is unavoidable.

We have nevertheless sought to minimize the impact of accreditation/approval fees in a number of ways that will benefit small agencies and persons. First, there are safeguards on accrediting entity fees in the IAA that are mirrored in the final rule. In particular, the IAA prohibits such fees from exceeding the costs of accreditation/approval. In addition, the Department must approve the accreditation/approval fees assessed by accrediting entities. In setting fees, the Department and the accrediting entities must consider the relative size, the geographic location, and the number of Convention adoption cases managed by the agencies or persons expected to apply, thus there will be consideration of the impact of proposed fees on small agencies and persons. A fee schedule submitted to the Department for approval must contain: (1) A list of separate non-refundable fees for Convention accreditation and Convention approval; (2) the cost of all activities associated with the accreditation/approval cycle; and (3) the cost of obtaining temporary accreditation services (if provided by the accrediting entity). Also, accrediting entities will be required to provide clear information on fees to the public, including making their fee schedules available to the public and listing the fees to be charged to the applicant in a contract between the parties. The Department believes that the safeguards in the final rule will minimize the costs of accreditation fees for small entities. The Department, however, cannot predict or guarantee any particular range of fees prior to designating the accrediting entities and approving their fee schedules.

Second, small agencies may pursue the option of temporary accreditation. Small agencies that fulfill certain criteria may be temporarily accredited for one or two years, depending upon size. The applicable standards for temporary accreditation are less comprehensive than the standards for full accreditation. Also, obtaining temporary accreditation is an abbreviated process—a site visit is optional, not required. The Department expects the fees associated with the cost of temporary accreditation to be less than the fees for full accreditation.

Third, an agency or person can assist with adoptions under the Convention without becoming accredited or approved, and can therefore avoid paying accreditation/approval fees by acting under the supervision of an accredited agency or approved person.

Finally, the IAA and the regulations exempt certain service providers from the requirements of accreditation/approval. For example, a social work professional or organization that performs a home study or child background study in the United States, but is not currently providing and has not previously provided any other adoption service in connection with a particular Convention adoption, is an ''exempted provider.'' Exempted providers do not have to be accredited, temporarily accredited, approved, or supervised by a primary provider. Thus small home study providers and individual social workers that provide only home studies or child background studies will not have to pay to become accredited or approved.

Comment: One commenter is concerned that private accrediting entities will charge excessive fees for travel and accommodations during the accreditation process.

Response: We address the costs of site visit evaluations in this final rule. Section 96.8(b)(2) provides that separate fees based on actual costs incurred may be charged for the travel and maintenance of evaluators, and § 96.111(a) also requires that additional fees be paid for actual costs involved with site visits to temporarily accredited agencies. These costs are easily verified through receipts for travel expenses. Additionally, State licensing authorities and nonprofit entities chosen to be accrediting entities are likely to have travel policies that provide internal limits on payments for expenses such as travel, meals, and accommodations. In addition, the Department can address this issue in the agreements with the accrediting entities. The rule provides sufficient safeguards to ensure that the travel charges are not burdensome to small entities and to ensure the reasonableness of charges for the travel and maintenance of site evaluators.

Comment: Nine commenters believe that it will create great economic hardship for small agencies and persons to comply with the standards found in subpart F. A few commenters write that complying with the standards of subpart F will be so costly that many small agencies and persons could be forced to close. Other commenters are concerned that increased costs for agencies and persons will be passed on to prospective adoptive parent(s).

Response: The Department is aware that the cost of providing adoption services in Convention cases will be affected by the cost of complying with the standards in subpart F, and discussed that impact at length in the explanatory statement to the proposed rule issued on September 15, 2003. The proposed rule preamble at Section VI, A contains an analysis of the impact on small entities. After considering the public comments, the Department continues to believe that the basis and conclusions of that analysis are sound. That analysis therefore is hereby incorporated by reference and available at 68 FR 54064, 54089–54090 (September 15, 2003).

We have taken a number of steps, however, in the final rule to be responsive to the comments on the costs of compliance, while at the same time keeping in mind the specific IAA requirements for certain standards and the overall statutory goals of protecting the best interests of a child and of protecting birth parents, adoptive parents, and children from abuses. For example, we revisited and changed, to lower the impact on small entities, the standards relating to the following issues:

- Risk assessment; primary provider's liability; waivers of liability;
- Budget and audit;
- Training and education of social service personnel.

Under the final rule's standards on risk assessment and liability, agencies and persons are not required to retain an independent provider to conduct a risk assessment. Instead, they may use in-house personnel, thereby reducing the cost of an assessment. Moreover, we revised §§ 96.45 and 96.46 so that primary providers are no longer required to assume tort, contract, and other civil liability to the prospective adoptive parent(s) for the supervised provider's provision of contracted adoption services or to maintain a bond, escrow account, or liability insurance in an amount sufficient to cover the risks of liability arising from its work with supervised providers. In addition, § 96.39, which prohibited agencies and persons from using blanket waivers of liability, has been changed so that agencies and persons may ask prospective adoptive parent(s) to sign a waiver after full disclosure of information as long as the waiver complies with applicable State law and is limited, specific, and based on risks that have been discussed and explained in the adoption services contract. By changing these standards, we believe that we have decreased the risk exposure of primary providers so that they will more easily obtain the required insurance at a reasonable cost. In total, the revision of these standards makes compliance easier by decreasing the cost and burden on small agencies and persons.

With regard to budget and audit standards, we modified the language of § 96.33 to make meeting the budget standards more practicable while still maintaining a focus on an agency's or person's financial soundness. The proposed rule required agencies to keep three months of cash reserves on hand. The final rule instead requires the assets on-hand to be sufficient to meet two months of expenses and allows agencies to satisfy the standard by including non-cash assets. In addition, the agency or person's finances are subject to an independent audit every four years instead of annually as initially proposed. Requiring less cash on hand and reducing the frequency of independent audits will enable small agencies and persons to demonstrate financial soundness without incurring significant new costs.

We have also considered the concerns of commenters who believed that the education and experience requirements for social service personnel would be too costly and have made cost-saving changes. The final rule differs from the proposed rule in that non-supervisory employees who are conducting home studies or child background studies are not required to hold a master's degree in social work. The final rule requires that these personnel be authorized or licensed to complete a home study under the laws of the State in which they practice, meet DHS requirements for home study preparers, and be monitored by a qualified social work supervisor. Likewise, we reduced from 20 hours each year to 30 hours every two years the training requirement for employees who provide adoption services that involve clinical skills and judgment.

While some commenters also were concerned about the potential cost of standards involving data collection, the Department did not significantly modify the standards related to data collection. Section 104 of the IAA lists the information and data that must be collected and reported to Congress annually. To ensure the availability of this information, § 96.43 of the rule still requires accredited agencies and approved persons who are acting as primary providers to track cases, to collect data, and to report the information as set forth in the rule.

The Department also has considered input on the costs to agencies and persons of complying with the standards in subpart F. The cost information from commenters ranged widely—some commenters predicted complying with subpart F could cost from $75,000 to $100,000 per agency or person. Others suggested that a range of

$2,000 to $3,000 per case in increased costs that agencies and persons would have to charge for adoption services. (Commenters were not always clear about whether these projections included accreditation/approval fees or just the cost of complying with the standards in subpart F.) We reviewed the standards, and concluded that they are either required by section 203(b) of the IAA or will otherwise further the goals of the IAA.

In summary, the Department asserts that the economic impact on small entities will not be significant. The final rule allows agencies and persons to choose to be accredited or approved or to act as supervised providers; largely exempts certain types of very small providers, specifically home study and child background study preparers; includes a special temporary accreditation procedure just for small agencies; and uses a substantial compliance structure, so that entities are not required to comply fully with every single standard in order to be accredited or approved. The Department hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

B. The Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule, as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and import markets.

C. The Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Public Law 104–4; 109 Stat. 48; 2 U.S.C. 1532, generally requires agencies to prepare a statement, including cost-benefit and other analyses, before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector. Section 4 of UFMA, 2 U.S.C. 1503, excludes legislation necessary for implementation of treaty obligations. The IAA falls within this exclusion because it is the implementing legislation for the Convention. In any event, this rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year. Moreover, because this rule will not significantly or uniquely affect small governments, section 203 of UFMA, 2 U.S.C. 1533, does not require preparation of a small government agency plan in connection with it.

D. Executive Order 13132: Federalism

A rule has federalism implications under Executive Order 13132 if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The federalism implications of the rule in light of the requirements of the IAA are discussed in Section IV paragraph (D) of the proposed rule in the preamble. In light of that analysis, the Department finds that this regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that this rule does not have sufficient federalism implications to require consultations or to warrant the preparation of a federalism summary impact statement under section 6 of Executive Order 13132.

Comment: Some commenters argued that State licensing should be sufficient for Convention accreditation and that the Department should not require agencies to become accredited at the Federal level, while others argued that the regulations deferred too much to State licensing of agencies.

Response: Federal accreditation standards for intercountry adoptions under the Convention are required to implement the Convention and the IAA; State licensing or authorization to provide adoption services is not sufficient to meet the requirements of the Convention or the IAA. While the Department considered State licensing practices in crafting the rule, as required by section 203(a)(2) of the IAA, the rule contains Federal standards related specifically to the minimum standards of section 203(b) of the IAA. These IAA-related standards, and standards related to compliance with the Convention, may or may not be part of a particular State's licensing requirements for adoption agencies.

E. Executive Order 12866: Regulatory Review

This regulation has been reviewed by the Office of Management and Budget.

F. Executive Order 12988: Civil Justice Reform

The Department has reviewed these regulations in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation risks, establish clear legal standards, and reduce burden. The Department has made every reasonable effort to ensure compliance with the requirements in Executive Order 12988.

G. The Paperwork Reduction Act of 1995

This rule does not impose information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C., Chapter 35. Section 503(c) of the IAA specifically exempts from the PRA information collection for several purposes, including information collections for purposes of IAA section 202(b)(4), which relates to data collection, records maintenance, and reporting by the accrediting entities. In accord with this and the other IAA exemptions from the PRA, at the time of the proposed rule the Department determined that all of the collections of information contained in the rule were exempt from PRA requirements, with the exception of the third-party disclosures contained in §§ 96.91 and 96.92 of subpart M. The Department has modified § 96.91 and § 96.92 and, after re-examining the language, purpose, and history of IAA section 503(c)'s broad PRA exemption addressing the information collection and management duties of accrediting entities, has concluded that the disclosure requirements in these sections, like the rest of the information collections in this rule, are exempted from the PRA. The explanation of the IAA exemptions to the PRA were explained in the Department's preamble to the proposed rule published on September 15, 2003 (Section IV, paragraph F), which is incorporated herein by reference, to the extent that it is consistent with our conclusion that all collections in the final rule are exempt from the PRA. Consistent with this conclusion, the request for approval of an information collection that was submitted to OMB for review and clearance concurrent with the notice of proposed rulemaking has been withdrawn. The principal practical effect of recognizing this exemption is that the disclosure requirements under § 96.91 and § 96.92 will not have to be reviewed under the

PRA every three years in order to remain effective.

Although the PRA does not apply to these sections as they have been revised, the Department has remained attentive to the regulatory burden issues associated with them, and has considered the one comment received on the burden estimates for the third-party disclosure requirements contained in §§ 96.91 and 96.92. The commenter suggests that no accurate estimate of PRA burden hours can be made, and also suggests increasing the estimate of burden hours.

The Department did subsequent research and revised its burden estimates. We acknowledge that, at this time, it is difficult to estimate burdens accurately without knowing the exact numbers of agencies and persons that will apply for accreditation or approval. Nevertheless, we used information from potential accrediting entities to estimate the anticipated burden of the third-party disclosure duties required under subpart M. At the time we did the original estimates, we believed we might have up to nine accrediting entities. We currently have six candidates eligible to become accrediting entities. In response to this comment, we contacted all six current accrediting entity candidates and asked them to estimate the additional burden in hours and dollars to comply with the third-party disclosure requirements set forth in § 96.91 (Dissemination of information to the public about accreditation and approval status) and § 96.92 (Dissemination of information to the public about complaints against accredited agencies and approved persons) of the proposed rule. Those estimates ranged from less than 26 hours per year to as high as 459 hours per year. The Department thought it prudent to be conservative, so we used the highest estimate we were given, 459 hours, which added an additional 94 hours per year to our previous estimate. In addition, using the highest cost estimate, we added an additional $1,924.00 per year to our previous estimate for yearly maintenance costs, for an estimated annual maintenance cost burden of $12,879.00. While these average burden estimates each increased slightly, the overall burden estimate went down because the number of eligible accrediting entity candidates has decreased from 9 to 6. Therefore, each estimate was multiplied by 6, rather than 9, to get our total annual burden estimates. Thus, our new burden estimates for the proposed rule would be: 2754 hours per year (459 hours multiplied by 6); $63,978.00 for total start-up/capital costs ($10,663.00 multiplied by 6); and $77,274.00 in annual operation and maintenance costs ($12,879.00 multiplied by 6). The burden of the final rule would not be any greater and is likely to be significantly less because the final rule does not require the preparation of a summary of the accreditation or approval study.

H. Congressional Review

This rule is not a major rule as defined in 5 U.S.C. Chapter 8.

I. The Treasury and General Government Appropriations Act of 1999—Assessment of Federal Regulations and Policies on Families

In light of the subject matter of these regulations and section 654 of the Treasury and General Government Appropriations Act of 1999, Public Law 105–277, 112 Stat. 2681 (1998), the Department has assessed the impact of these regulations on family well-being in accordance with section 654(c) of that Act. This rule implements the Convention and the IAA requirements related to the accreditation and approval of adoption service providers who provide adoption services to families involved in an intercountry adoption. This rule will promote child safety, child and family well-being, and stability for children in need of a permanent family placement through intercountry adoption. The rule will help to ensure that agencies and persons are taking appropriate steps to protect children and to strengthen and support families involved in the intercountry adoption process.

Comment: The Department received several comments on the effect of the regulation on family well-being. Commenters point out that the rule will promote child safety and family well-being because the rule is consistent with the overall goal of the Convention, which is to place children eligible for adoption in permanent family placements. Others were concerned that the Convention was not a good idea because they believe adoptions from a country typically decrease substantially when a country becomes a Convention country, even though there are still children eligible for an intercountry adoption. Other commenters were concerned about potential increased costs of adoptions and the negative effect such cost increases might have on the availability of adoption as an option for families.

Response: We cannot act contrary to the Convention and the IAA. We note that the Convention's principles and international norms are consistent with section 654's focus on family well-being. As for the impact of costs on adoptive families, we have revised the rule in many sections to lower the costs of compliance while at the same time trying to ensure that the rule contains standards that are required under the IAA and/or further its objectives.

List of Subjects in 22 CFR Part 96

Adoption and foster care, International agreements, Reporting and recordkeeping requirements.

■ Accordingly, the Department adds new part 96 to title 22 of the CFR, chapter I, subchapter J to read as follows:

PART 96—ACCREDITATION OF AGENCIES AND APPROVAL OF PERSONS UNDER THE INTERCOUNTRY ADOPTION ACT OF 2000 (IAA)

Subpart A—General Provisions

Sec.

Subpart B—Selection, Designation, and Duties of Accrediting Entities

Subpart C—Accreditation and Approval Requirements for the Provision of Adoption Services

Subpart D—Application Procedures for Accreditation and Approval

Authority: The Convention on Protection of Children and Co-operation in Respect of

Intercountry Adoption (done at the Hague, May 29, 1993), S. Treaty Doc. 105–51 (1998), 1870 U.N.T.S. 167 (Reg. No. 31922 (1993)); The Intercountry Adoption Act of 2000, 42 U.S.C. 14901–14954.

Subpart A—General Provisions

§ 96.1 Purpose.

This part provides for the accreditation and approval of agencies and persons pursuant to the Intercountry Adoption Act of 2000 (Pub. L. 106–279, 42 U.S.C. 14901–14954). Subpart B of this part establishes the procedures for the selection and designation of accrediting entities to perform the accreditation and approval functions. Subparts C through H establish the general procedures and standards for accreditation and approval of agencies and persons (including renewal of accreditation or approval). Subparts I through M address the oversight of accredited or approved agencies and persons. Subpart N establishes special rules relating to small agencies that wish to seek temporary accreditation.

§ 96.2 Definitions.

As used in this part, the term:

Accredited agency means an agency that has been accredited by an accrediting entity, in accordance with the standards in subpart F of this part, to provide adoption services in the United States in cases subject to the Convention. It does not include a temporarily accredited agency.

Accrediting entity means an entity that has been designated by the Secretary to accredit agencies (including temporarily accredit) and/or to approve persons for purposes of providing adoption services in the United States in cases subject to the Convention.

Adoption means the judicial or administrative act that establishes a permanent legal parent-child relationship between a minor and an adult who is not already the minor's legal parent and terminates the legal parent-child relationship between the adoptive child and any former parent(s).

Adoption record means any record, information, or item related to a specific Convention adoption of a child received or maintained by an agency, person, or public domestic authority, including, but not limited to, photographs, videos, correspondence, personal effects, medical and social information, and any other information about the child. An adoption record does not include a record generated by an agency, person, or a public domestic authority to comply with the requirement to file information with the Case Registry on adoptions not subject to the Convention pursuant to section 303(d) of the IAA (42 U.S.C. 14932(d)).

Adoption service means any one of the following six services:

(1) Identifying a child for adoption and arranging an adoption;

(2) Securing the necessary consent to termination of parental rights and to adoption;

(3) Performing a background study on a child or a home study on a prospective adoptive parent(s), and reporting on such a study;

(4) Making non-judicial determinations of the best interests of a child and the appropriateness of an adoptive placement for the child;

(5) Monitoring a case after a child has been placed with prospective adoptive parent(s) until final adoption; or

(6) When necessary because of a disruption before final adoption, assuming custody and providing (including facilitating the provision of) child care or any other social service pending an alternative placement.

Agency means a private, nonprofit organization licensed to provide adoption services in at least one State. (For-profit entities and individuals that provide adoption services are considered ''persons'' as defined in this section.)

Approved home study means a review of the home environment of the child's prospective adoptive parent(s) that has been:

(1) Completed by an accredited agency or temporarily accredited agency; or

(2) Approved by an accredited agency or temporarily accredited agency.

Approved person means a person that has been approved, in accordance with the standards in subpart F of this part, by an accrediting entity to provide adoption services in the United States in cases subject to the Convention.

Best interests of the child shall have the meaning given to it by the law of the State with jurisdiction to decide whether a particular adoption or adoption-related action is in a child's best interests.

Case Registry means the tracking system jointly established by the Secretary and DHS to comply with section 102(e) of the IAA (42 U.S.C. 14912).

Central Authority means the entity designated as such under Article 6(1) of the Convention by any Convention country or, in the case of the United States, the United States Department of State.

Central Authority function means any duty required under the Convention to be carried out, directly or indirectly, by a Central Authority.

Child welfare services means services, other than those defined as ''adoption services'' in this section, that are designed to promote and protect the well-being of a family or child. Such services include, but are not limited to, recruiting and identifying adoptive parent(s) in cases of disruption (but not assuming custody of the child), arranging or providing temporary foster care for a child in connection with a Convention adoption or providing educational, social, cultural, medical, psychological assessment, mental health, or other health-related services for a child or family in a Convention adoption case.

Competent authority means a court or governmental authority of a foreign country that has jurisdiction and authority to make decisions in matters of child welfare, including adoption.

Complaint Registry means the system created by the Secretary pursuant to § 96.70 to receive, distribute, and monitor complaints relevant to the accreditation or approval status of agencies and persons.

Convention means the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption done at The Hague on May 29, 1993.

Convention adoption means the adoption of a child resident in a Convention country by a United States citizen, or an adoption of a child resident in the United States by an individual or individuals residing in a Convention country, when, in connection with the adoption, the child has moved or will move between the United States and the Convention country.

Convention country means a country that is a party to the Convention and with which the Convention is in force for the United States.

Country of origin means the country in which a child is a resident and from which a child is emigrating in connection with his or her adoption.

Debarment means the loss of accreditation or approval by an agency or person as a result of an order of the Secretary under which the agency or person is temporarily or permanently barred from accreditation or approval.

DHS means the Department of Homeland Security and encompasses the former Immigration and Naturalization Service (INS) or any successor entity designated by the Secretary of Homeland Security to assume the functions vested in the Attorney General by the IAA relating to the INS's responsibilities.

Disruption means the interruption of a placement for adoption during the post-placement period.

Dissolution means the termination of the adoptive parent(s)' parental rights after an adoption.

Exempted provider means a social work professional or organization that performs a home study on prospective adoptive parent(s) or a child background study (or both) in the United States in connection with a Convention adoption (including any reports or updates), but that is not currently providing and has not previously provided any other adoption service in the case.

IAA means the Intercountry Adoption Act of 2000, Public Law 106–279 (2000) (42 U.S.C. 14901–14954), as amended from time to time.

Legal custody means having legal responsibility for a child under the order of a court of law, a public domestic authority, competent authority, public foreign authority, or by operation of law.

Legal services means services, other than those defined in this section as ''adoption services,'' that relate to the provision of legal advice and information and to the drafting of legal instruments. Such services include, but are not limited to, drawing up contracts, powers of attorney, and other legal instruments; providing advice and counsel to adoptive parent(s) on completing DHS or Central Authority forms; and providing advice and counsel to accredited agencies, temporarily accredited agencies, approved persons, or prospective adoptive parent(s) on how to comply with the Convention, the IAA, and the regulations implementing the IAA.

Person means an individual or a private, for-profit entity (including a corporation, company, association, firm, partnership, society, or joint stock company) providing adoption services. It does not include public domestic authorities or public foreign authorities.

Post-adoption means after an adoption; in cases in which an adoption occurs in a Convention country and is followed by a re-adoption in the United States, it means after the adoption in the Convention country.

Post-placement means after a grant of legal custody or guardianship of the child to the prospective adoptive parent(s), or to a custodian for the purpose of escorting the child to the identified prospective adoptive parent(s), and before an adoption.

Primary provider means the accredited agency, temporarily accredited agency, or approved person that is identified pursuant to § 96.14 as responsible for ensuring that all six adoption services are provided and for supervising and being responsible for supervised providers where used.

Public domestic authority means an authority operated by a State, local, or tribal government within the United States.

Public foreign authority means an authority operated by a national or subnational government of a Convention country.

Secretary means the Secretary of State, the Assistant Secretary of State for Consular Affairs, or any other Department of State official exercising the Secretary of State's authority under the Convention, the IAA, or any regulations implementing the IAA, pursuant to a delegation of authority.

State means the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands.

Supervised provider means any agency, person, or other non-governmental entity, including any foreign entity, regardless of whether it is called a facilitator, agent, attorney, or by any other name, that is providing one or more adoption services in a Convention case under the supervision and responsibility of an accredited agency, temporarily accredited agency, or approved person that is acting as the primary provider in the case.

Temporarily accredited agency means an agency that has been accredited on a temporary basis by an accrediting entity, in accordance with the standards in subpart N of this part, to provide adoption services in the United States in cases subject to the Convention. It does not include an accredited agency.

§ 96.3 [Reserved].

Subpart B—Selection, Designation, and Duties of Accrediting Entities

§ 96.4 Designation of accrediting entities by the Secretary.

(a) The Secretary, in the Secretary's discretion, will designate one or more entities that meet the criteria set forth in § 96.5 to perform the accreditation (including temporary accreditation) and/or approval functions. Each accrediting entity's designation will be set forth in an agreement between the Secretary and the accrediting entity. The agreement will govern the accrediting entity's operations. The agreements will be published in the **Federal Register**.

(b) The Secretary's designation may authorize an accrediting entity to accredit (including temporarily accredit) agencies, to approve persons, or to both accredit agencies and approve persons. The designation may also limit the accrediting entity's geographic jurisdiction or impose other limits on the entity's jurisdiction.

(c) A public entity may only be designated to accredit agencies and approve persons that are located in the public entity's State.

§ 96.5 Requirement that accrediting entity be a nonprofit or public entity.

An accrediting entity must qualify as either:

(a) An organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended, that has expertise in developing and administering standards for entities providing child welfare services; or

(b) A public entity (other than a Federal entity), including, but not limited to, any State or local government or governmental unit or any political subdivision, agency, or instrumentality thereof, that is responsible for licensing adoption agencies in a State and that has expertise in developing and administering standards for entities providing child welfare services.

§ 96.6 Performance criteria for designation as an accrediting entity.

An entity that seeks to be designated as an accrediting entity must demonstrate to the Secretary:

(a) That it has a governing structure, the human and financial resources, and systems of control adequate to ensure its reliability;

(b) That it is capable of performing the accreditation or approval functions or both on a timely basis and of administering any renewal cycle authorized under § 96.60;

(c) That it can monitor the performance of agencies it has accredited or temporarily accredited and persons it has approved (including their use of any supervised providers) to ensure their continued compliance with the Convention, the IAA, and the regulations implementing the IAA;

(d) That it has the capacity to take appropriate adverse actions against agencies it has accredited or temporarily accredited and persons it has approved;

(e) That it can perform the required data collection, reporting, and other similar functions;

(f) Except in the case of a public entity, that it operates independently of any agency or person that provides adoption services, and of any membership organization that includes agencies or persons that provide adoption services;

(g) That it has the capacity to conduct its accreditation, temporary accreditation, and approval functions fairly and impartially;

(h) That it can comply with any conflict-of-interest prohibitions set by the Secretary in its agreement;

(i) That it prohibits conflicts of interest with agencies or persons or with any membership organization that includes agencies or persons that provide adoption services; and

(j) That it prohibits its employees or other individuals acting as site evaluators, including, but not limited to, volunteer site evaluators, from becoming employees or supervised providers of an agency or person for at least one year after they have evaluated such agency or person for accreditation, temporary accreditation, or approval.

§ 96.7 Authorities and responsibilities of an accrediting entity.

(a) An accrediting entity may be authorized by the Secretary to perform some or all of the following functions:

(1) Determining whether agencies are eligible for accreditation and/or temporary accreditation;

(2) Determining whether persons are eligible for approval;

(3) Overseeing accredited agencies, temporarily accredited agencies, and/or approved persons by monitoring their compliance with applicable requirements;

(4) Investigating and responding to complaints about accredited agencies, temporarily accredited agencies, and approved persons (including their use of supervised providers);

(5) Taking adverse action against an accredited agency, temporarily accredited agency, or approved person, and/or referring an accredited agency, temporarily accredited agency, or approved person for possible action by the Secretary;

(6) Determining whether accredited agencies and approved persons are eligible for renewal of their accreditation or approval on a cycle consistent with § 96.60;

(7) Collecting data from accredited agencies, temporarily accredited agencies, and approved persons, maintaining records, and reporting information to the Secretary, State courts, and other entities; and

(8) Assisting the Secretary in taking appropriate action to help an agency or person in transferring its Convention cases and adoption records.

(b) The Secretary may require the accrediting entity:

(1) To utilize the Complaint Registry as provided in subpart J of this part; and

(2) To fund a portion of the costs of operating the Complaint Registry with fees collected by the accrediting entity pursuant to the schedule of fees approved by the Secretary as provided in § 96.8.

(c) An accrediting entity must perform all responsibilities in accordance with the Convention, the IAA, the regulations implementing the IAA, and its agreement with the Secretary.

§ 96.8 Fees charged by accrediting entities.

(a) An accrediting entity may charge fees for accreditation or approval services under this part only in accordance with a schedule of fees approved by the Secretary. Before approving a schedule of fees proposed by an accrediting entity, or subsequent proposed changes to an approved schedule, the Secretary will require the accrediting entity to demonstrate:

(1) That its proposed schedule of fees reflects appropriate consideration of the relative size and geographic location and volume of Convention cases of the agencies or persons it expects to serve;

(2) That the total fees the accrediting entity expects to collect under the schedule of fees will not exceed the full costs of accreditation or approval under this part (including, but not limited to, costs for completing the accreditation or approval process, complaint review and investigation, routine oversight and enforcement, and other data collection and reporting activities).

(b) The schedule of fees must:

(1) Establish separate non-refundable fees for Convention accreditation and Convention approval;

(2) Include in each fee for full Convention accreditation or approval the costs of all activities associated with the accreditation or approval cycle, including but not limited to, costs for completing the accreditation or approval process, complaint review and investigation, routine oversight and enforcement, and other data collection and reporting activities, except that separate fees based on actual costs incurred may be charged for the travel and maintenance of evaluators; and

(3) If the accrediting entity provides temporary accreditation services, include fees as required by § 96.111 for agencies seeking temporary accreditation under subpart N of this part.

(c) An accrediting entity must make its approved schedule of fees available to the public, including prospective applicants for accreditation or approval, upon request. At the time of application, the accrediting entity must specify the fees to be charged to the applicant in a contract between the parties and must provide notice to the applicant that no portion of the fee will be refunded if the applicant fails to become accredited or approved.

(d) Nothing in this section shall be construed to provide a private right of action to challenge any fee charged by an accrediting entity pursuant to a schedule of fees approved by the Secretary.

§ 96.9 Agreement between the Secretary and the accrediting entity.

An accrediting entity must perform its functions pursuant to a written agreement with the Secretary that will be published in the **Federal Register**. The agreement will address:

(a) The responsibilities and duties of the accrediting entity;

(b) The method by which the costs of delivering the accreditation, temporary accreditation, or approval services may be recovered through the collection of fees from those seeking accreditation, temporary accreditation, or approval, and how the entity's schedule of fees will be approved;

(c) How the accrediting entity will address complaints about accredited agencies, temporarily accredited agencies, and approved persons (including their use of supervised providers) and complaints about the accrediting entity itself;

(d) Data collection requirements;

(e) Matters of communication and accountability between both the accrediting entity and the applicant(s) and between the accrediting entity and the Secretary; and

(f) Other matters upon which the parties have agreed.

§ 96.10 Suspension or cancellation of the designation of an accrediting entity by the Secretary.

(a) The Secretary will suspend or cancel the designation of an accrediting entity if the Secretary concludes that it is substantially out of compliance with the Convention, the IAA, the regulations implementing the IAA, other applicable laws, or the agreement with the Secretary. Complaints regarding the performance of the accrediting entity may be submitted to the Department of State, Bureau of Consular Affairs. The Secretary will consider complaints in determining whether an accrediting entity's designation should be suspended or canceled.

(b) The Secretary will notify an accrediting entity in writing of any deficiencies in the accrediting entity's performance that could lead to the suspension or cancellation of its designation, and will provide the accrediting entity with an opportunity to demonstrate that suspension or cancellation is unwarranted, in accordance with procedures established in the agreement entered into pursuant to § 96.9.

(c) An accrediting entity may be considered substantially out of compliance under circumstances that include, but are not limited to:

(1) Failing to act in a timely manner when presented with evidence that an accredited agency or approved person is substantially out of compliance with the standards in subpart F of this part or a temporarily accredited agency is substantially out of compliance with the standards in § 96.104;

(2) Accrediting or approving significant numbers of agencies or persons whose performance results in intervention of the Secretary for the purpose of suspension, cancellation, or debarment;

(3) Failing to perform its responsibilities fairly and objectively;

(4) Violating prohibitions on conflicts of interest;

(5) Failing to meet its reporting requirements;

(6) Failing to protect information or documents that it receives in the course of performing its responsibilities; and

(7) Failing to monitor frequently and carefully the compliance of accredited agencies, temporarily accredited agencies, and approved persons with the home study requirements of the Convention, section 203(b)(1)(A)(ii) of the IAA (42 U.S.C. 14923(b)(1)(A)(ii)), and § 96.47.

(d) An accrediting entity that is subject to a final action of suspension or cancellation may petition the United States District Court for the District of Columbia or the United States district court in the judicial district in which the accrediting entity is located to set aside the action as provided in section 204(d) of the IAA (42 U.S.C. 14924(d)).

§ 96.11 [Reserved].

Subpart C—Accreditation and Approval Requirements for the Provision of Adoption Services

§ 96.12 Authorized adoption service providers.

(a) Once the Convention has entered into force for the United States, except as provided in section 505(b) of the IAA (relating to transitional cases), an agency or person may not offer, provide, or facilitate the provision of any adoption service in the United States in connection with a Convention adoption unless it is:

(1) An accredited agency, a temporarily accredited agency, or an approved person;

(2) A supervised provider; or

(3) An exempted provider, if the exempted provider's home study or child background study will be reviewed and approved by an accredited agency or temporarily accredited agency pursuant to § 96.47(c) or 96.53(b).

(b) A public domestic authority may also offer, provide, or facilitate the provision of any such adoption service.

(c) Neither conferral nor maintenance of accreditation, temporary accreditation, or approval, nor status as an exempted or supervised provider, nor status as a public domestic authority shall be construed to imply, warrant, or establish that, in any specific case, an adoption service has been provided consistently with the Convention, the IAA, or the regulations implementing the IAA. Conferral and maintenance of accreditation, temporary accreditation, or approval under this part establishes only that the accrediting entity has concluded, in accordance with the standards and procedures of this part, that the agency or person conducts adoption services in substantial compliance with the applicable standards set forth in this part; it is not a guarantee that in any specific case the accredited agency, temporarily accredited agency, or approved person is providing adoption services consistently with the Convention, the IAA, the regulations implementing the IAA, or any other applicable law, whether Federal, State, or foreign. Neither the Secretary nor any accrediting entity shall be responsible for any acts of an accredited agency, temporarily accredited agency, approved person, exempted provider, supervised provider, or other entity providing services in connection with a Convention adoption.

§ 96.13 Circumstances in which accreditation, approval, or supervision is not required.

(a) *Home studies and child background studies.* Home studies and child background studies, when performed by exempted providers, may be performed without accreditation, temporary accreditation, approval, or supervision; provided, however, that an exempted provider's home study must be approved by an accredited agency or temporarily accredited agency in accordance with § 96.47(c), and an exempted provider's child background study must be approved by an accredited agency or temporarily accredited agency in accordance with § 96.53(b).

(b) *Child welfare services.* An agency or person does not need to be accredited, temporarily accredited, approved, or operate as a supervised provider if it is providing only child welfare services, and not providing any adoption services, in connection with a Convention adoption. If the agency or person provides both a child welfare service and any adoption service in the United States in a Convention adoption case, it must be accredited, temporarily accredited, or approved or operate as a supervised provider unless the only adoption service provided is preparation of a home study and/or a child background study.

(c) *Legal services.* An agency or person does not need to be accredited, temporarily accredited, approved, or to operate as a supervised provider if it is providing only legal services, and not providing any adoption services, in connection with a Convention adoption. If the agency or person provides both a legal service and any adoption service in the United States in a Convention adoption case, it must be accredited, temporarily accredited, or approved or operate as a supervised provider unless the only adoption service provided is preparation of a home study and/or a child background study. Nothing in this part shall be construed:

(1) To permit an attorney to provide both legal services and adoption services in an adoption case where doing so is prohibited by State law; or

(2) To require any attorney who is providing one or more adoption services as part of his or her employment by a public domestic authority to be accredited or approved or operate as a supervised provider.

(d) *Prospective adoptive parent(s) acting on own behalf.* Prospective adoptive parent(s) may act on their own behalf without being accredited, temporarily accredited, or approved unless so acting is prohibited by State law or the law of the Convention country. In the case of a child immigrating to the United States in connection with his or her adoption, such conduct must be permissible under the laws of the State in which the prospective adoptive parent(s) reside and the laws of the Convention country from which the parent(s) seek to adopt. In the case of a child emigrating from the United States in connection with his or her adoption, such conduct must be permissible under the laws of the State where the child resides and the laws of the Convention country in which the parent(s) reside.

§ 96.14 Providing adoption services using other providers.

(a) Accreditation, temporary accreditation, and approval under this part require that, in each Convention adoption case, an accredited agency, a temporarily accredited agency, or an approved person will be identified and act as the primary provider. If one accredited agency, temporarily

accredited agency, or approved person is providing all adoption services by itself, it must act as the primary provider. If just one accredited agency, temporarily accredited agency, or approved person is involved in providing adoption services, the sole accredited agency, temporarily accredited agency, or approved person must act as the primary provider. If adoption services in the Convention case are being provided by more than one accredited agency, temporarily accredited agency, or approved person, the agency or person that has child placement responsibility, as evidenced by the following, must act as the primary provider throughout the case:

(1) Entering into placement contracts with prospective adoptive parent(s) to provide child referral and placement;

(2) Accepting custody from a birth parent or other legal custodian in a Convention country for the purpose of placement for adoption;

(3) Assuming responsibility for liaison with a Convention country's Central Authority or its designees with regard to arranging an adoption; or

(4) Receiving from or sending to a Convention country information about a child that is under consideration for adoption, unless acting as a local service provider that conveys such information to parent(s) on behalf of the primary provider.

(b) Pursuant to § 96.44, in the case of accredited agencies or approved persons, and § 96.104(g), in the case of temporarily accredited agencies, the primary provider may only use the following to provide adoption services in the United States:

(1) A supervised provider, including an accredited agency, temporarily accredited agency, or approved person;

(2) An exempted provider, if the exempted provider's home study or child background study will be reviewed and approved by an accredited agency or temporarily accredited agency pursuant to § 96.47(c) or § 96.53(b); or

(3) A public domestic authority.

(c) Pursuant to § 96.44 of subpart F, in the case of accredited agencies or approved persons, and § 96.104(g) of subpart N, in the case of temporarily accredited agencies, the primary provider may only use the following to provide adoption services in a Convention country:

(1) A Central Authority, competent authority, or a public foreign authority;

(2) A foreign supervised provider, including a provider accredited by the Convention country; or

(3) A foreign provider (agency, person, or other non-governmental entity) who

(i) Has secured or is securing the necessary consent to termination of parental rights and to adoption, if the primary provider verifies consent pursuant to § 96.46(c); or

(ii) Has prepared or is preparing a background study on a child in a case involving immigration to the United States (incoming case) or a home study on prospective adoptive parent(s) in a case involving emigration from the United States (outgoing case), and a report on the results of such a study, if the primary provider verifies the study and report pursuant to § 96.46(c).

(d) The primary provider is not required to provide supervision or to assume responsibility for:

(1) Public domestic authorities; or

(2) Central Authorities, competent authorities, and public foreign authorities.

(e) The primary provider must adhere to the standards contained in § 96.45 (Using supervised providers in the United States) when using supervised providers in the United States and the applicable standards contained in § 96.46 (Using providers in Convention countries) when using providers outside the United States.

§ 96.15 Examples.

The following examples illustrate the rules of §§ 96.12 to 96.14:

Example 1. Identifying a child for adoption and arranging an adoption. Agency X identifies children eligible for adoption in the United States on a TV program in an effort to recruit prospective adoptive parent(s). A couple in a Convention country calls Agency X about one of the children. Agency X refers them to an agency or person in the United States who arranges intercountry adoptions. Agency X does not require accreditation, temporarily accreditation, approval or supervision because it is not both identifying and arranging the adoption. In contrast, Agency Y, located in the United States, provides information about children eligible for adoption in a Convention country on a website and then arranges for interested U.S. parents to adopt those children. Agency Y must be accredited, temporarily accredited, approved, or supervised because, in addition to identifying children eligible for adoption, it is also helping to arrange the adoption.

Example 2. Child welfare services exemption. Doctor X evaluates the medical records and a video of Child Y. The evaluation will be used in a Convention adoption as part of the placement of Child Y and is the only service that Doctor X provides in the United States with regard to Child Y's adoption. Doctor X (not employed with an accredited agency or approved person) does not need to be approved or supervised because she is not providing an adoption service as defined in § 96.2.

Example 3. Home study exemption. Social Worker X, in the United States, (not employed with an accredited agency or approved person) interviews Prospective Adoptive Parent Y, obtains a criminal background study, and checks the references of Prospective Adoptive Parent Y, then composes a report and submits the report to an accredited agency for use in a Convention adoption. Social Worker X does not provide any other services to Prospective Adoptive Parent Y. Social Worker X qualifies as an exempted provider and therefore need not be approved or operate as supervised provider. In contrast, Social Worker Z, in the United States, (not employed with an accredited agency or approved person) prepares a home study report for Prospective Adoptive Parent(s) W, and in addition re-enters the house after Child V has been placed with Prospective Adoptive Parent(s) W to assess how V and W are adjusting to life as a family. This assessment is post-placement monitoring, which is an adoption service. Therefore, Social Worker Z would need to become approved before providing this assessment for this Convention adoption or else operate as a supervised provider. If an agency or person provides an adoption service in addition to a home study or child background study, the agency or person needs to become accredited, temporarily accredited, approved, or supervised before providing that adoption service.

Example 4. Child background study exemption. An employee of Agency X interviews Child Y in the United States and compiles a report concerning Child Y's social and developmental history for use in a Convention adoption. Agency X provides no other adoption services on behalf of Child Y. Agency X does not need to be accredited, temporarily accredited, approved, or supervised. Agency X is only conducting and creating a child background study, and therefore is an exempted provider. In contrast, an employee of Agency Z interviews Child W in the United States and creates a child background study for use in a Convention adoption. Agency Z subsequently identifies prospective adoptive parent(s) and arranges a new adoption when Child W's previous adoption becomes disrupted. Agency Z needs to be accredited, temporarily accredited, approved, or supervised before providing this service. If an agency or person provides an adoption service in addition to a child background study or home study, the agency or person needs to be accredited, temporarily accredited, approved, or supervised before providing the additional service.

Example 5. Home study and child welfare services exemptions. Agency X interviews Prospective Adoptive Parent Y, obtains a criminal background check, checks the references of Prospective Adoptive Parent Y, then composes a home study and submits it to an accredited agency for use in a Convention adoption in the United States. Parent Y later joins a post-adoption support group for adoptive parents sponsored by Agency X. If Agency X performs no other adoption services, Agency X does not need to be accredited, temporarily accredited, approved, or supervised. If an agency or person provides a home study or child background study as well as other services in

the United States that do not require accreditation, temporary accreditation, approval, or supervision, and no other adoption services, the agency or person is an exempted provider.

Example 6. Exempted provider. Agency X interviews Prospective Adoptive Parent(s) Y, obtains a criminal background check, checks the references of Prospective Adoptive Parent(s) Y, and then composes a home study and submits the report to an accredited agency. In addition, Agency X interviews Child Z and compiles a report concerning Child Z's social and developmental history. All of Agency X's work is done in the United States. Both reports will be used in a Convention adoption. If Agency X performs no other adoption services, Agency X does not need to be accredited, temporarily accredited, approved, or supervised. If an agency or person provides a home study and child background study as well as other services that do not require accreditation, temporary accreditation, approval or supervision, and no other adoption services, the agency or person is an exempted provider.

Example 7. Legal services exemption. Attorney X (not employed with an accredited agency or approved person) provides advice and counsel to Prospective Adoptive Parent(s) Y on filling out DHS paperwork required for a Convention adoption. Among other papers, Attorney X prepares an affidavit of consent to termination of parental rights and to adoption of Child W to be signed by the birth mother in the United States. Attorney X must be approved or supervised because securing consent to termination of parental rights is an adoption service. In contrast, Attorney Z (not employed with an accredited agency or approved person) assists Adoptive Parent(s) T to complete an adoption in the State in which they reside, after they have been granted an adoption in Child V's Convention country of origin. Attorney Z is exempt from approval or supervision because she is providing legal services, but no adoption services.

Example 8. Post-placement monitoring. A court in a Convention country has granted custody of Child W to Prospective Adoptive Parent(s) Y pending the completion of W's adoption. Agency X interviews both Prospective Adoptive Parent(s) Y and Child W in their home in the United States. Agency X gathers information on the adjustment of Child W as a member of the family and inquires into the social and educational progress of Child W. Agency X must be accredited, temporarily accredited, approved, or supervised. Agency X's activities constitute post-placement monitoring, which is an adoption service. In contrast, if Person Z provided counseling for Prospective Adoptive Parent(s) Y and/or Child W, but provided no adoption services in the United States to the family, Person Z would not need to be approved or supervised. Post-placement counseling is different than post-placement monitoring because it does not relate to evaluating the adoption placement. Post-placement counseling is not an adoption service and does not trigger the accreditation/approval requirements of the IAA and this part.

Example 9. Post-adoption services. Convention Country H requires that post-adoption reports be completed and sent to its Central Authority every year until adopted children reach the age of 18. Agency X provides support groups and a newsletter for U.S. parents that have adopted children from Country H and encourages parents to complete their post-adoption reports annually. Agency X does not need to be accredited, temporarily accredited, approved, or supervised because it is providing only post-adoption services. Post-adoption services are not included in the definition of adoption services, and therefore, do not trigger accreditation/approval requirements of the IAA and this part.

Example 10. Assuming custody and providing services after a disruption. Agency X provides counseling for Prospective Adoptive Parent(s) Y and for Child W pending the completion of Child W's Convention adoption. The adoption is eventually disrupted. Agency X helps recruit and identify new prospective adoptive parent(s) for Child W, but it is Agency P that assumes custody of Child W and places him in foster care until an alternative adoptive placement can be found. Agency X is not required to be accredited, temporarily accredited, approved, or supervised because it is not providing an adoption service in the United States as defined in § 96.2. Agency P, on the other hand, is providing an adoption service and would have to be accredited, temporarily accredited, approved, or supervised.

Example 11. Making non-judicial determinations of best interest of child and appropriateness of adoptive placement of child. Agency X receives information about and a videotape of Child W from the institution where Child W lives in a Convention country. Based on the age, sex, and health problems of Child W, Agency X matches Prospective Adoptive Parent(s) Y with Child W. Prospective Adoptive Parent(s) Y receive a referral from Agency X and agree to accept the referral and proceed with the adoption of Child W. Agency X determines that Prospective Adoptive Parent(s) Y are a good placement for Child W and notifies the competent authority in W's country of origin that it has found a match for Child W and will start preparing adoption paperwork. All of Agency X's services are provided in the United States. Agency X is performing an adoption service and must be accredited, temporarily accredited, approved, or supervised.

Example 12. Securing necessary consent to termination of parental rights and to adoption. Facilitator Y is accredited by Convention Country Z. He has contacts at several orphanages in Convention Country Z and helps Agency X match children eligible for adoption with prospective adoptive parent(s) in the United States. Facilitator Y works with the institution that is the legal guardian of Child W in order to get the documents showing the institution's legal consent to the adoption of Child W. Agency X is the only U.S. agency providing adoption services in the case. Agency X must be accredited, temporarily accredited, or approved and must either treat Facilitator Y as a foreign supervised provider in accordance with § 96.46(a) and (b) or verify the consents Facilitator Y secured, in accordance with § 96.46(c).

§ 96.16 Public domestic authorities.

Public domestic authorities are not required to become accredited to be able to provide adoption services in Convention adoption cases, but must comply with the Convention, the IAA, and other applicable law when providing services in a Convention adoption case.

§ 96.17 Effective date of accreditation and approval requirements.

The Secretary will publish a document in the **Federal Register** announcing the date on which the Convention will enter into force for the United States. As of that date, the regulations in subpart C of this part will govern Convention adoptions between the United States and Convention countries, and agencies or persons providing adoption services must comply with § 96.12 and applicable Federal regulations. The Secretary will maintain for the public a current listing of Convention countries.

Subpart D—Application Procedures for Accreditation and Approval

§ 96.18 Scope.

(a) Agencies are eligible to apply for ''accreditation'' or ''temporary accreditation.'' Persons are eligible to apply for ''approval.'' Temporary accreditation is governed by the provisions in subpart N of this part. Unless otherwise provided in subpart N, the provisions of this subpart do not apply to agencies seeking temporary accreditation. Applications for full accreditation rather than temporary accreditation will be processed in accordance with § 96.20 and § 96.21.

(b) An agency or person seeking to be accredited or approved as of the time the Convention enters into force for the United States, and to be included on the initial list of accredited agencies and approved persons that the Secretary will deposit with the Permanent Bureau of the Hague Conference on Private International Law, must follow the special provision contained in § 96.19.

(c) If an agency or person is reapplying for accreditation or approval following cancellation of its accreditation or approval by an accrediting entity or refusal by an accrediting entity to renew its accreditation or approval, it must comply with the procedures in § 96.78.

(d) If an agency or person that has been accredited or approved is seeking

renewal, it must comply with the procedures in § 96.63.

§ 96.19 Special provision for agencies and persons seeking to be accredited or approved as of the time the Convention enters into force for the United States.

(a) The Secretary will establish and announce, by public notice in the **Federal Register**, a transitional application deadline. An agency or person seeking to be accredited or approved as of the time the Convention enters into force for the United States must submit an application to an accrediting entity with jurisdiction to evaluate its application, with the required fee(s), by the transitional application deadline. The Secretary will subsequently establish and announce a date by which such agencies and persons must complete the accreditation or approval process in time to be accredited or approved at the time the Convention enters into force for the United States (deadline for initial accreditation or approval).

(b) The accrediting entity must use its best efforts to provide a reasonable opportunity for an agency or person that applies by the transitional application deadline to complete the accreditation or approval process by the deadline for initial accreditation or approval. Only those agencies and persons that are accredited or approved by the deadline for initial accreditation or approval will be included on the initial list of accredited agencies and approved persons that the Secretary will deposit with the Permanent Bureau of the Hague Conference on Private International Law.

(c) The accrediting entity may, in its discretion, permit an agency or person that fails to submit an application by the transitional application deadline to attempt to complete the accreditation or approval process in time to be included on the initial list; however, such an agency or person is not assured an opportunity to complete the accreditation or approval process in time to be included on the initial list. The accrediting entity must give priority to applicants that filed by the transitional application deadline. If such an agency or person succeeds in completing the accreditation or approval process in time to be included on the initial list, it will be treated as an agency or person that applied by the transitional application deadline for the purposes of § 96.58 and § 96.60(b).

§ 96.20 First-time application procedures for accreditation and approval.

(a) Agencies or persons seeking accreditation or approval for the first time may submit an application at any time, with the required fee(s), to an accrediting entity with jurisdiction to evaluate the application. If an agency or person seeks to be accredited or approved by the deadline for initial accreditation or approval, an agency or person must comply with the procedures in § 96.19.

(b) The accrediting entity must establish and follow uniform application procedures and must make information about those procedures available to agencies and persons that are considering whether to apply for accreditation or approval. An accrediting entity must evaluate the applicant for accreditation or approval in a timely fashion.

§ 96.21 Choosing an accrediting entity.

(a) An agency that seeks to become accredited must apply to an accrediting entity that is designated to provide accreditation services and that has jurisdiction over its application. A person that seeks to become approved must apply to an accrediting entity that is designated to provide approval services and that has jurisdiction over its application. The agency or person may apply to only one accrediting entity at a time.

(b)(1) If the agency or person is applying for accreditation or approval pursuant to this part for the first time, it may apply to any accrediting entity with jurisdiction over its application. However, the agency or person must apply to the same accrediting entity that handled its prior application when it next applies for accreditation or approval, if the agency or person:

(i) Has been denied accreditation or approval;

(ii) Has withdrawn its application in anticipation of denial;

(iii) Has had its accreditation or approval cancelled by an accrediting entity or the Secretary;

(iv) Has been temporarily debarred by the Secretary; or

(v) Has been refused renewal of its accreditation or approval by an accrediting entity.

(2) If the prior accrediting entity is no longer providing accreditation or approval services, the agency or person may apply to any accrediting entity with jurisdiction over its application.

§ 96.22 [Reserved]

Subpart E—Evaluation of Applicants for Accreditation and Approval

§ 96.23 Scope.

The provisions in this subpart govern the evaluation of agencies and persons for accreditation or approval. Temporary accreditation is governed by the provisions in subpart N of this part. Unless otherwise provided in subpart N, the provisions of this subpart do not apply to agencies seeking temporary accreditation.

§ 96.24 Procedures for evaluating applicants for accreditation or approval.

(a) The accrediting entity must designate at least two evaluators to evaluate an agency or person for accreditation or approval. The accrediting entity's evaluators must have expertise in intercountry adoption, standards evaluation, or experience with the management or oversight of child welfare organizations and must also meet any additional qualifications required by the Secretary in the agreement with the accrediting entity.

(b) To evaluate the agency's or person's eligibility for accreditation or approval, the accrediting entity must:

(1) Review the agency's or person's written application and supporting documentation;

(2) Verify the information provided by the agency or person by examining underlying documentation;

(3) Consider any complaints received by the accrediting entity pursuant to subpart J of this part; and

(4) Conduct site visit(s).

(c) The site visit(s) may include, but need not be limited to, interviews with birth parents, adoptive parent(s), prospective adoptive parent(s), and adult adoptee(s) served by the agency or person, interviews with the agency's or person's employees, and interviews with other individuals knowledgeable about the agency's or person's provision of adoption services. It may also include a review of on-site documents. The accrediting entity must, to the extent practicable, advise the agency or person in advance of the type of documents it wishes to review during the site visit. The accrediting entity must require at least one of the evaluators to participate in each site visit. The accrediting entity must determine the number of evaluators that participate in a site visit in light of factors such as:

(1) The agency's or person's size;

(2) The number of adoption cases it handles;

(3) The number of sites the accrediting entity decides to visit; and

(4) The number of individuals working at each site.

(d) Before deciding whether to accredit an agency or approve a person, the accrediting entity may, in its discretion, advise the agency or person of any deficiencies that may hinder or prevent its accreditation or approval and defer a decision to allow the agency or person to correct the deficiencies.

§ 96.25 Access to information and documents requested by the accrediting entity.

(a) The agency or person must give the accrediting entity access to information and documents, including adoption case files and proprietary information, that it requires or requests to evaluate an agency or person for accreditation or approval and to perform its oversight, enforcement, renewal, data collection, and other functions. The agency or person must also cooperate with the accrediting entity by making employees available for interviews upon request.

(b) Accrediting entity review of adoption case files pursuant to paragraph (a) shall be limited to Convention adoption case files, except that, in the case of first-time applicants for accreditation or approval, the accrediting entity may review adoption case files related to non-Convention cases for purposes of assessing the agency's or person's capacity to comply with record-keeping and data-management standards in subpart F of this part. The accrediting entity shall permit the agency or person to redact names and other information that identifies birth parent(s), prospective adoptive parent(s), and adoptee(s) from such non-Convention adoption case files prior to their inspection by the accrediting entity.

(c) If an agency or person fails to provide requested documents or information, or to make employees available as requested, the accrediting entity may deny accreditation or approval or, in the case of an accredited agency, temporarily accredited agency, or approved person, take appropriate adverse action against the agency or person solely on that basis.

§ 96.26 Protection of information and documents by the accrediting entity.

(a) The accrediting entity must protect from unauthorized use and disclosure all documents and information about the agency or person it receives including, but not limited to, documents and proprietary information about the agency's or person's finances, management, and professional practices received in connection with the performance of its accreditation or approval, oversight, enforcement, renewal, data collection, or other functions under its agreement with the Secretary and this part.

(b) The documents and information received may not be disclosed to the public and may be used only for the purpose of performing the accrediting entity's accreditation or approval functions and related tasks under its agreement with Secretary and this part, or to provide information to the Secretary, the Complaint Registry, or an appropriate Federal, State, or local authority, including, but not limited to, a public domestic authority or local law enforcement authority unless:

(1) Otherwise authorized by the agency or person in writing;

(2) Otherwise required under Federal or State laws; or

(3) Required pursuant to subpart M of this part.

(c) Unless the names and other information that identifies the birth parent(s), prospective adoptive parent(s), and adoptee(s) are requested by the accrediting entity for an articulated reason, the agency or person may withhold from the accrediting entity such information and substitute individually assigned codes in the documents it provides. The accrediting entity must have appropriate safeguards to protect from unauthorized use and disclosure of any information in its files that identifies birth parent(s), prospective adoptive parent(s), and adoptee(s). The accrediting entity must ensure that its officers, employees, contractors, and evaluators who have access to information or documents provided by the agency or person have signed a non-disclosure agreement reflecting the requirements of § 96.26(a) and (b). The accrediting entity must maintain an accurate record of the agency's or person's application, the supporting documentation, and the basis for its decision.

§ 96.27 Substantive criteria for evaluating applicants for accreditation or approval.

(a) The accrediting entity may not grant an agency accreditation or a person approval, or permit an agency's or person's accreditation or approval to be maintained, unless the agency or person demonstrates to the satisfaction of the accrediting entity that it is in substantial compliance with the standards in subpart F of this part.

(b) When the agency or person makes its initial application for accreditation or approval under the standards contained in subpart F of this part, the accrediting entity may measure the capacity of the agency or person to achieve substantial compliance with these standards where relevant evidence of its actual performance is not yet available. Once the agency or person has been accredited or approved pursuant to this part, the accrediting entity must, for the purposes of monitoring, renewal, enforcement, and reapplication after adverse action, consider the agency's or person's actual performance in deciding whether the agency or person is in substantial compliance with the standards contained in subpart F of this part, unless the accrediting entity determines that it is still necessary to measure capacity because adequate evidence of actual performance is not available.

(c) The standards contained in subpart F of this part apply during all the stages of accreditation and approval, including, but not limited to, when the accrediting entity is evaluating an applicant for accreditation or approval, when it is determining whether to renew an agency's or person's accreditation or approval, when it is monitoring the performance of an accredited agency or approved person, and when it is taking adverse action against an accredited agency or approved person. Except as provided in § 96.25 and paragraphs (e) and (f) of this section, the accrediting entity may only use the standards contained in subpart F of this part when determining whether an agency or person may be granted or permitted to maintain Convention accreditation or approval.

(d) The Secretary will ensure that each accrediting entity performs its accreditation and approval functions using only a method approved by the Secretary that is substantially the same as the method approved for use by each other accrediting entity. Each such method will include: an assigned value for each standard (or element of a standard); a method of rating an agency's or person's compliance with each applicable standard; and a method of evaluating whether an agency's or person's overall compliance with all applicable standards establishes that the agency or person is in substantial compliance with the standards and can be accredited, temporarily accredited, or approved. The Secretary will ensure that the value assigned to each standard reflects the relative importance of that standard to compliance with the Convention and the IAA and is consistent with the value assigned to the standard by other accrediting entities. The accrediting entity must advise applicants of the value assigned to each standard (or elements of each standard) at the time it provides applicants with the application materials.

(e) If an agency or person has previously been denied accreditation or approval, has withdrawn its application in anticipation of denial, has had its temporary accreditation withdrawn, or is reapplying for accreditation or approval after cancellation, refusal to renew, or temporary debarment, the accrediting entity may take the reasons underlying such actions into account when evaluating the agency or person

for accreditation or approval, and may deny accreditation or approval on the basis of the previous action.

(f) If an agency or person that has an ownership or control interest in the applicant, as that term is defined in section 1124 of the Social Security Act (42 U.S.C. 1320a–3), has been debarred pursuant to § 96.85, the accrediting entity may take into account the reasons underlying the debarment when evaluating the agency or person for accreditation or approval, and may deny accreditation or approval or refuse to renew accreditation or approval on the basis of the debarment.

(g) The standards contained in subpart F of this part do not eliminate the need for an agency or person to comply fully with the laws of the jurisdictions in which it operates. An agency or person must provide adoption services in Convention cases consistent with the laws of any State in which it operates and with the Convention and the IAA. Persons that are approved to provide adoption services may only provide such services in States that do not prohibit persons from providing adoption services. Nothing in the application of subparts E and F should be construed to require a State to allow persons to provide adoption services if State law does not permit them to do so.

§ 96.28 [Reserved]

Subpart F—Standards for Convention Accreditation and Approval

§ 96.29 Scope.

The provisions in this subpart provide the standards for accrediting agencies and approving persons. Temporary accreditation is governed by the provisions in subpart N of this part. Unless otherwise provided in subpart N of this part, the provisions in this subpart do not apply to agencies seeking temporary accreditation.

Licensing and Corporate Governance

§ 96.30 State licensing.

(a) The agency or person is properly licensed or otherwise authorized by State law to provide adoption services in at least one State.

(b) The agency or person follows applicable State licensing and regulatory requirements in all jurisdictions in which it provides adoption services.

(c) If it provides adoption services in a State in which it is not itself licensed or authorized to provide such services, the agency or person does so only:

(1) Through agencies or persons that are licensed or authorized by State law to provide adoption services in that State and that are exempted providers or acting as supervised providers; or

(2) Through public domestic authorities.

(d) In the case of a person, the individual or for-profit entity is not prohibited by State law from providing adoption services in any State where it is providing adoption services, and does not provide adoption services in Convention countries that prohibit individuals or for-profit entities from providing adoption services.

§ 96.31 Corporate structure.

(a) The agency qualifies for nonprofit tax treatment under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or for nonprofit status under the laws of any State.

(b) The person is an individual or is a for-profit entity organized as a corporation, company, association, firm, partnership, society, or joint stock company, or other legal entity under the laws of any State.

§ 96.32 Internal structure and oversight.

(a) The agency or person has (or, in the case of an individual, is) a chief executive officer or equivalent official who is qualified by education, adoption service experience, and management credentials to ensure effective use of resources and coordinated delivery of the services provided by the agency or person, and has authority and responsibility for management and oversight of the staff and any supervised providers in carrying out the adoption-related functions of the organization.

(b) The agency or person has a board of directors or a similar governing body that establishes and approves its mission, policies, budget, and programs; provides leadership to secure the resources needed to support its programs; includes one or more individuals with experience in adoption, including but not limited to, adoptees, birth parents, prospective adoptive parent(s), and adoptive parents; and appoints and oversees the performance of its chief executive officer or equivalent official. This standard does not apply where the person is an individual practitioner.

(c) The agency or person keeps permanent records of the meetings and deliberations of its governing body and of its major decisions affecting the delivery of adoption services.

(d) The agency or person has in place procedures and standards, pursuant to § 96.45 and § 96.46, for the selection, monitoring, and oversight of supervised providers.

(e) The agency or person discloses to the accrediting entity the following information:

(1) Any other names by which the agency or person is or has been known, under either its current or any former form of organization, and the addresses and phone numbers used when such names were used;

(2) The name, address, and phone number of each current director, manager, and employee of the agency or person, and, for any such individual who previously served as a director, manager, or employee of another provider of adoption services, the name, address, and phone number of such other provider; and

(3) The name, address, and phone number of any entity it uses or intends to use as a supervised provider.

Financial and Risk Management

§ 96.33 Budget, audit, insurance, and risk assessment requirements.

(a) The agency or person operates under a budget approved by its governing body, if applicable, for management of its funds. The budget discloses all remuneration (including perquisites) paid to the agency's or person's board of directors, managers, employees, and supervised providers.

(b) The agency's or person's finances are subject to annual internal review and oversight and are subject to independent audits every four years. The agency or person submits copies of internal financial review reports for inspection by the accrediting entity each year.

(c) The agency or person submits copies of each audit, as well as any accompanying management letter or qualified opinion letter, for inspection by the accrediting entity.

(d) The agency or person meets the financial reporting requirements of Federal and State laws and regulations.

(e) The agency's or person's balance sheets show that it operates on a sound financial basis and maintains on average sufficient cash reserves, assets, or other financial resources to meet its operating expenses for two months, taking into account its projected volume of cases and its size, scope, and financial commitments. The agency or person has a plan to transfer its Convention cases if it ceases to provide or is no longer permitted to provide adoption services in Convention cases. The plan includes provisions for an organized closure and reimbursement to clients of funds paid for services not yet rendered.

(f) If it accepts charitable donations, the agency or person has safeguards in place to ensure that such donations do

not influence child placement decisions in any way.

(g) The agency or person assesses the risks it assumes, including by reviewing information on the availability of insurance coverage for Convention-related activities. The agency or person uses the assessment to meet the requirements in paragraph (h) of this section and as the basis for determining the type and amount of professional, general, directors' and officers', errors and omissions, and other liability insurance to carry.

(h) The agency or person maintains professional liability insurance in amounts reasonably related to its exposure to risk, but in no case in an amount less than $1,000,000 in the aggregate.

(i) The agency's or person's chief executive officer, chief financial officer, and other officers or employees with direct responsibility for financial transactions or financial management of the agency or person are bonded.

§ 96.34 Compensation.

(a) The agency or person does not compensate any individual who provides intercountry adoption services with an incentive fee or contingent fee for each child located or placed for adoption.

(b) The agency or person compensates its directors, officers, employees, and supervised providers who provide intercountry adoption services only for services actually rendered and only on a fee-for-service, hourly wage, or salary basis rather than a contingent fee basis.

(c) The agency or person does not make any payments, promise payment, or give other consideration to any individual directly or indirectly involved in provision of adoption services in a particular case, except for salaries or fees for services actually rendered and reimbursement for costs incurred. This does not prohibit an agency or person from providing in-kind or other donations not intended to influence or affect a particular adoption.

(d) The fees, wages, or salaries paid to the directors, officers, employees, and supervised providers of the agency or person are not unreasonably high in relation to the services actually rendered, taking into account the country in which the adoption services are provided and norms for compensation within the intercountry adoption community in that country, to the extent that such norms are known to the accrediting entity; the location, number, and qualifications of staff; workload requirements; budget; and size of the agency or person.

(e) Any other compensation paid to the agency's or person's directors or members of its governing body is not unreasonably high in relation to the services rendered, taking into account the same factors listed in paragraph (d) of this section and its for-profit or nonprofit status.

(f) The agency or person identifies all vendors to whom clients are referred for non-adoption services and discloses to the accrediting entity any corporate or financial arrangements and any family relationships with such vendors.

Ethical Practices and Responsibilities

§ 96.35 Suitability of agencies and persons to provide adoption services consistent with the Convention.

(a) The agency or person provides adoption services ethically and in accordance with the Convention's principles of:

(1) Ensuring that intercountry adoptions take place in the best interests of children; and

(2) Preventing the abduction, exploitation, sale, or trafficking of children.

(b) In order to permit the accrediting entity to evaluate the suitability of an agency or person for accreditation or approval, the agency or person discloses to the accrediting entity the following information related to the agency or person, under its current or any former name:

(1) Any instances in which the agency or person has lost the right to provide adoption services in any State or country, including the basis for such action(s);

(2) Any instances in which the agency or person was debarred or otherwise denied the authority to provide adoption services in any State or country, including the basis and disposition of such action(s);

(3) Any licensing suspensions for cause or other negative sanctions by oversight bodies against the agency or person, including the basis and disposition of such action(s);

(4) For the prior ten-year period, any disciplinary action(s) against the agency or person by a licensing or accrediting body, including the basis and disposition of such action(s);

(5) For the prior ten-year period, any written complaint(s) related to the provision of adoption-related services, including the basis and disposition of such complaints, against the agency or person filed with any State or Federal or foreign regulatory body and of which the agency or person was notified;

(6) For the prior ten-year period, any known past or pending investigation(s) (by Federal authorities or by public domestic authorities), criminal charge(s), child abuse charge(s), or lawsuit(s) against the agency or person, related to the provision of child welfare or adoption-related services, and the basis and disposition of such action(s).

(7) Any instances where the agency or person has been found guilty of any crime under Federal, State, or foreign law or has been found to have committed any civil or administrative violation involving financial irregularities under Federal, State, or foreign law;

(8) For the prior five-year period, any instances where the agency or person has filed for bankruptcy; and

(9) Descriptions of any businesses or activities that are inconsistent with the principles of the Convention and that have been or are currently carried out by the agency or person, affiliate organizations, or by any organization in which the agency or person has an ownership or controlling interest.

(c) In order to permit the accrediting entity to evaluate the suitability of an agency or person for accreditation or approval, the agency or person (for its current or any former names) discloses to the accrediting entity the following information about its individual directors, officers, and employees:

(1) For the prior ten-year period, any conduct by any such individual related to the provision of adoption-related services that was subject to external disciplinary proceeding(s);

(2) Any convictions or current investigations of any such individual who is in a senior management position for acts involving financial irregularities;

(3) The results of a State criminal background check and a child abuse clearance for any such individual in the United States in a senior management position or who works directly with parent(s) and/or children (unless such checks have been included in the State licensing process); and

(4) A completed FBI Form FD–258 for each such individual in the United States in a senior management position or who works directly with parent(s) and/or children, which the agency or person must keep on file in case future allegations warrant submission of the form for a Federal criminal background check of any such individual.

(5) Descriptions of any businesses or activities that are inconsistent with the principles of the Convention and that are known to have been or are currently carried out by current individual directors, officers, or employees of the agency or person.

(d) In order to permit the accrediting entity to evaluate the suitability of a

person who is an individual practitioner for approval, the individual:

(1) Provides the results of a State criminal background check and a child abuse clearance to the accrediting entity;

(2) Completes and retains a FBI Form FD–258 on file in case future allegations warrant submission of the form for a Federal criminal background check;

(3) If a lawyer, for every jurisdiction in which he or she has ever been admitted to the Bar, provides a certificate of good standing or an explanation of why he or she is not in good standing, accompanied by any relevant documentation and immediately reports to the accrediting entity any disciplinary action considered by a State bar association, regardless of whether the action relates to intercountry adoption; and

(4) If a social worker, for every jurisdiction in which he or she has been licensed, provides a certificate of good standing or an explanation of why he or she is not in good standing, accompanied by any relevant documentation.

(e) In order to permit the accrediting entity to monitor the suitability of an agency or person, the agency or person must disclose any changes in the information required by § 96.35 within thirty business days of learning of the change.

§ 96.36 Prohibition on child buying.

(a) The agency or person prohibits its employees and agents from giving money or other consideration, directly or indirectly, to a child's parent(s), other individual(s), or an entity as payment for the child or as an inducement to release the child. If permitted or required by the child's country of origin, an agency or person may remit reasonable payments for activities related to the adoption proceedings, pre-birth and birth medical costs, the care of the child, the care of the birth mother while pregnant and immediately following birth of the child, or the provision of child welfare and child protection services generally. Permitted or required contributions shall not be remitted as payment for the child or as an inducement to release the child.

(b) The agency or person has written policies and procedures in place reflecting the prohibitions in paragraph (a) of this section and reinforces them in its employee training programs.

Professional Qualifications and Training for Employees

§ 96.37 Education and experience requirements for social service personnel.

(a) The agency or person only uses employees with appropriate qualifications and credentials to perform, in connection with a Convention adoption, adoption-related social service functions that require the application of clinical skills and judgment (home studies, child background studies, counseling, parent preparation, post-placement, and other similar services).

(b) The agency's or person's employees meet any State licensing or regulatory requirements for the services they are providing.

(c) The agency's or person's executive director, the supervisor overseeing a case, or the social service employee providing adoption-related social services that require the application of clinical skills and judgment (home studies, child background studies, counseling, parent preparation, post-placement, and other similar services) has experience in the professional delivery of intercountry adoption services.

(d) *Supervisors.* The agency's or person's social work supervisors have prior experience in family and children's services, adoption, or intercountry adoption and either:

(1) A master's degree from an accredited program of social work;

(2) A master's degree (or doctorate) in a related human service field, including, but not limited to, psychology, psychiatry, psychiatric nursing, counseling, rehabilitation counseling, or pastoral counseling; or

(3) In the case of a social work supervisor who is or was an incumbent at the time the Convention enters into force for the United States, the supervisor has significant skills and experience in intercountry adoption and has regular access for consultation purposes to an individual with the qualifications listed in paragraph (d)(1) or paragraph (d)(2) of this section.

(e) *Non-supervisory employees.* The agency's or person's non-supervisory employees providing adoption-related social services that require the application of clinical skills and judgment other than home studies or child background studies have either:

(1) A master's degree from an accredited program of social work or in another human service field; or

(2) A bachelor's degree from an accredited program of social work; or a combination of a bachelor's degree in any field and prior experience in family and children's services, adoption, or intercountry adoption; and

(3) Are supervised by an employee of the agency or person who meets the requirements for supervisors in paragraph (d) of this section.

(f) *Home studies.* The agency's or person's employees who conduct home studies:

(1) Are authorized or licensed to complete a home study under the laws of the States in which they practice;

(2) Meet the INA requirements for home study preparers in 8 CFR 204.3(b); and

(3) Are supervised by an employee of the agency or person who meets the requirements in paragraph (d) of this section.

(g) *Child background studies.* The agency's or person's employees who prepare child background studies:

(1) Are authorized or licensed to complete a child background study under the laws of the States in which they practice; and

(2) Are supervised by an employee of the agency or person who meets the requirements in paragraph (d) of this section.

§ 96.38 Training requirements for social service personnel.

(a) The agency or person provides newly hired employees who have adoption-related responsibilities involving the application of clinical skills and judgment (home studies, child background studies, counseling services, parent preparation, post-placement and other similar services) with a comprehensive orientation to intercountry adoption that includes training on:

(1) The requirements of the Convention, the IAA, the regulations implementing the IAA, and other applicable Federal regulations;

(2) The INA regulations applicable to the immigration of children adopted from a Convention country;

(3) The adoption laws of any Convention country where the agency or person provides adoption services;

(4) Relevant State laws;

(5) Ethical considerations in intercountry adoption and prohibitions on child-buying;

(6) The agency's or person's goals, ethical and professional guidelines, organizational lines of accountability, policies, and procedures; and

(7) The cultural diversity of the population(s) served by the agency or person.

(b) In addition to the orientation training required under paragraph (a) of this section, the agency or person provides initial training to newly hired

or current employees whose responsibilities include providing adoption-related social services that involve the application of clinical skills and judgment (home studies, child background studies, counseling services, parent preparation, post-placement and other similar services) that addresses:

(1) The factors in the countries of origin that lead to children needing adoptive families;

(2) Feelings of separation, grief, and loss experienced by the child with respect to the family of origin;

(3) Attachment and post-traumatic stress disorders;

(4) Psychological issues facing children who have experienced abuse or neglect and/or whose parents' rights have been terminated because of abuse or neglect;

(5) The impact of institutionalization on child development;

(6) Outcomes for children placed for adoption internationally and the benefits of permanent family placements over other forms of government care;

(7) The most frequent medical and psychological problems experienced by children from the countries of origin served by the agency or person;

(8) The process of developing emotional ties to an adoptive family;

(9) Acculturation and assimilation issues, including those arising from factors such as race, ethnicity, religion, and culture and the impact of having been adopted internationally; and

(10) Child, adolescent, and adult development as affected by adoption.

(c) The agency or person ensures that employees who provide adoption-related social services that involve the application of clinical skills and judgment (home studies, child background studies, counseling services, parent preparation, post-placement and other similar services) also receive, in addition to the orientation and initial training described in paragraphs (a) and (b) of this section, no less than thirty hours of training every two years, or more if required by State law, on current and emerging adoption practice issues through participation in seminars, conferences, documented distance learning courses, and other similar programs. Continuing education hours required under State law may count toward the thirty hours of training as long as the training is related to current and emerging adoption practice issues.

(d) The agency or person exempts newly hired and current employees from elements of the orientation and initial training required in paragraphs (a) and (b) of this section only where the employee has demonstrated experience with intercountry adoption and knowledge of the Convention and the IAA.

Information Disclosure, Fee Practices, and Quality Control Policies and Practices

§ 96.39 Information disclosure and quality control practices.

(a) The agency or person fully discloses in writing to the general public upon request and to prospective client(s) upon initial contact:

(1) Its adoption service policies and practices, including general eligibility criteria and fees;

(2) The supervised providers with whom the prospective client(s) can expect to work in the United States and in the child's country of origin and the usual costs associated with their services; and

(3) A sample written adoption services contract substantially like the one that the prospective client(s) will be expected to sign should they proceed.

(b) The agency or person discloses to client(s) and prospective client(s) that the following information is available upon request and makes such information available when requested:

(1) The number of its adoption placements per year for the prior three calendar years, and the number and percentage of those placements that remain intact, are disrupted, or have been dissolved as of the time the information is provided;

(2) The number of parents who apply to adopt on a yearly basis, based on data for the prior three calendar years; and

(3) The number of children eligible for adoption and awaiting an adoptive placement referral via the agency or person.

(c) The agency or person does not give preferential treatment to its board members, contributors, volunteers, employees, agents, consultants, or independent contractors with respect to the placement of children for adoption and has a written policy to this effect.

(d) The agency or person requires a client to sign a waiver of liability as part of the adoption service contract only where that waiver complies with applicable State law. Any waiver required is limited and specific, based on risks that have been discussed and explained to the client in the adoption services contract.

(e) The agency or person cooperates with reviews, inspections, and audits by the accrediting entity or the Secretary.

(f) The agency or person uses the internet in the placement of individual children eligible for adoption only where:

(1) Such use is not prohibited by applicable State or Federal law or by the laws of the child's country of origin;

(2) Such use is subject to controls to avoid misuse and links to any sites that reflect practices that involve the sale, abduction, exploitation, or trafficking of children;

(3) Such use, if it includes photographs, is designed to identify children either who are currently waiting for adoption or who have already been adopted or placed for adoption (and who are clearly so identified); and

(4) Such use does not serve as a substitute for the direct provision of adoption services, including services to the child, the prospective adoptive parent(s), and/or the birth parent(s).

§ 96.40 Fee policies and procedures.

(a) The agency or person provides to all applicants, prior to application, a written schedule of expected total fees and estimated expenses and an explanation of the conditions under which fees or expenses may be charged, waived, reduced, or refunded and of when and how the fees and expenses must be paid.

(b) Before providing any adoption service to prospective adoptive parent(s), the agency or person itemizes and discloses in writing the following information for each separate category of fees and estimated expenses that the prospective adoptive parent(s) will be charged in connection with a Convention adoption:

(1) *Home study.* The expected total fees and estimated expenses for home study preparation and approval, whether the home study is to be prepared directly by the agency or person itself, or prepared by a supervised provider, exempted provider, or approved person and approved as required under § 96.47;

(2) *Adoption expenses in the United States.* The expected total fees and estimated expenses for all adoption services other than the home study that will be provided in the United States. This category includes, but is not limited to, personnel costs, administrative overhead, operational costs, training and education, communications and publications costs, and any other costs related to providing adoption services in the United States;

(3) *Foreign country program expenses.* The expected total fees and estimated expenses for all adoption services that will be provided in the child's Convention country. This category includes, but is not limited to, costs for

personnel, administrative overhead, training, education, legal services, and communications, and any other costs related to providing adoption services in the child's Convention country;

(4) *Care of the child.* The expected total fees and estimated expenses charged to prospective adoptive parent(s) for the care of the child in the country of origin prior to adoption, including, but not limited to, costs for food, clothing, shelter and medical care; foster care services; orphanage care; and any other services provided directly to the child;

(5) *Translation and document expenses.* The expected total fees and estimated expenses for obtaining any necessary documents and for any translation of documents related to the adoption, along with information on whether the prospective adoptive parent(s) will be expected to pay such costs directly or to third parties, either in the United States or in the child's Convention country, or through the agency or person. This category includes, but is not limited to, costs for obtaining, translating, or copying records or documents required to complete the adoption, costs for the child's Convention court documents, passport, adoption certificate and other documents related to the adoption, and costs for notarizations and certifications;

(6) *Contributions.* Any fixed contribution amount or percentage that the prospective adoptive parent(s) will be expected or required to make to child protection or child welfare service programs in the child's Convention country or in the United States, along with an explanation of the intended use of the contribution and the manner in which the transaction will be recorded and accounted for; and

(7) *Post-placement and post-adoption reports.* The expected total fees and estimated expenses for any post-placement or post-adoption reports that the agency or person or parent(s) must prepare in light of any requirements of the expected country of origin.

(c) If the following fees and estimated expenses were not disclosed as part of the categories identified in paragraph (b) of this section, the agency or person itemizes and discloses in writing any:

(1) *Third party fees.* The expected total fees and estimated expenses for services that the prospective adoptive parent(s) will be responsible to pay directly to a third party. Such third party fees include, but are not limited to, fees to competent authorities for services rendered or Central Authority processing fees; and

(2) *Travel and accommodation expenses.* The expected total fees and estimated expenses for any travel, transportation, and accommodation services arranged by the agency or person for the prospective adoptive parent(s).

(d) The agency or person also specifies in its adoption services contract when and how funds advanced to cover fees or expenses will be refunded if adoption services are not provided.

(e) When the agency or person uses part of its fees to provide special services, such as cultural programs for adoptee(s), scholarships or other services, it discloses this policy to the prospective adoptive parent(s) in advance of providing any adoption services and gives the prospective adoptive parent(s) a general description of the programs supported by such funds.

(f) The agency or person has mechanisms in place for transferring funds to Convention countries when the financial institutions of the Convention country so permit and for obtaining written receipts for such transfers, so that direct cash transactions by the prospective adoptive parent(s) to pay for adoption services provided in the Convention country are minimized or unnecessary.

(g) The agency or person does not customarily charge additional fees and expenses beyond those disclosed in the adoption services contract and has a written policy to this effect. In the event that unforeseen additional fees and expenses are incurred in the Convention country, the agency or person charges such additional fees and expenses only under the following conditions:

(1) It discloses the fees and expenses in writing to the prospective adoptive parent(s);

(2) It obtains the specific consent of the prospective adoptive parent(s) prior to expending any funds in excess of $1000 for which the agency or person will hold the prospective adoptive parent(s) responsible or gives the prospective adoptive parent(s) the opportunity to waive the notice and consent requirement in advance. If the prospective adoptive parent(s) has the opportunity to waive the notice and consent requirement in advance, this policy is reflected in the written policies and procedures of the agency or person; and

(3) It provides written receipts to the prospective adoptive parent(s) for fees and expenses paid directly by the agency or person in the Convention country and retains copies of such receipts.

(h) The agency or person returns any funds to which the prospective adoptive parent(s) may be entitled within sixty days of the completion of the delivery of services.

Responding to Complaints and Records and Reports Management

§ 96.41 Procedures for responding to complaints and improving service delivery.

(a) The agency or person has written complaint policies and procedures that incorporate the standards in paragraphs (b) through (h) of this section and provides a copy of such policies and procedures, including contact information for the Complaint Registry, to client(s) at the time the adoption services contract is signed.

(b) The agency or person permits any birth parent, prospective adoptive parent or adoptive parent, or adoptee to lodge directly with the agency or person signed and dated complaints about any of the services or activities of the agency or person (including its use of supervised providers) that he or she believes raise an issue of compliance with the Convention, the IAA, or the regulations implementing the IAA, and advises such individuals of the additional procedures available to them if they are dissatisfied with the agency's or person's response to their complaint.

(c) The agency or person responds in writing to complaints received pursuant to paragraph (b) of this section within thirty days of receipt, and provides expedited review of such complaints that are time-sensitive or that involve allegations of fraud.

(d) The agency or person maintains a written record of each complaint received pursuant to paragraph (b) of this section and the steps taken to investigate and respond to it and makes this record available to the accrediting entity or the Secretary upon request.

(e) The agency or person does not take any action to discourage a client or prospective client from, or retaliate against a client or prospective client for: making a complaint; expressing a grievance; providing information in writing or interviews to an accrediting entity on the agency's or person's performance; or questioning the conduct of or expressing an opinion about the performance of an agency or person.

(f) The agency or person provides to the accrediting entity and the Secretary, on a semi-annual basis, a summary of all complaints received pursuant to paragraph (b) of this section during the preceding six months (including the number of complaints received and how each complaint was resolved) and an assessment of any discernible patterns in complaints received against the agency or person pursuant to paragraph

(b) of this section, along with information about what systemic changes, if any, were made or are planned by the agency or person in response to such patterns.

(g) The agency or person provides any information about complaints received pursuant to paragraph (b) of this section as may be requested by the accrediting entity or the Secretary.

(h) The agency or person has a quality improvement program appropriate to its size and circumstances through which it makes systematic efforts to improve its adoption services as needed. The agency or person uses quality improvement methods such as reviewing complaint data, using client satisfaction surveys, or comparing the agency's or person's practices and performance against the data contained in the Secretary's annual reports to Congress on intercountry adoptions.

§ 96.42 Retention, preservation, and disclosure of adoption records.

(a) The agency or person retains or archives adoption records in a safe, secure, and retrievable manner for the period of time required by applicable State law.

(b) The agency or person makes readily available to the adoptee and the adoptive parent(s) upon request all non-identifying information in its custody about the adoptee's health history or background.

(c) The agency or person ensures that personal data gathered or transmitted in connection with an adoption is used only for the purposes for which the information was gathered and safeguards sensitive individual information.

(d) The agency or person has a plan that is consistent with the provisions of this section, the plan required under § 96.33, and applicable State law for transferring custody of adoption records that are subject to retention or archival requirements to an appropriate custodian, and ensuring the accessibility of those adoption records, in the event that the agency or person ceases to provide or is no longer permitted to provide adoption services under the Convention.

(e) The agency or person notifies the accrediting entity and the Secretary in writing within thirty days of the time it ceases to provide or is no longer permitted to provide adoption services and provides information about the transfer of its adoption records.

§ 96.43 Case tracking, data management, and reporting.

(a) When acting as the primary provider, the agency or person maintains all the data required in this section in a format approved by the accrediting entity and provides it to the accrediting entity on an annual basis.

(b) When acting as the primary provider, the agency or person routinely generates and maintains reports as follows:

(1) For cases involving children immigrating to the United States, information and reports on the total number of intercountry adoptions undertaken by the agency or person each year in both Convention and non-Convention cases and, for each case:

(i) The Convention country or other country from which the child emigrated;

(ii) The State to which the child immigrated;

(iii) The State, Convention country, or other country in which the adoption was finalized;

(iv) The age of the child; and

(v) The date of the child's placement for adoption.

(2) For cases involving children emigrating from the United States, information and reports on the total number of intercountry adoptions undertaken by the agency or person each year in both Convention and non-Convention cases and, for each case:

(i) The State from which the child emigrated;

(ii) The Convention country or other country to which the child immigrated;

(iii) The State, Convention country, or other country in which the adoption was finalized;

(iv) The age of the child; and

(v) The date of the child's placement for adoption.

(3) For each disrupted placement involving a Convention adoption, information and reports about the disruption, including information on:

(i) The Convention country from which the child emigrated;

(ii) The State to which the child immigrated;

(iii) The age of the child;

(iv) The date of the child's placement for adoption;

(v) The reason(s) for and resolution(s) of the disruption of the placement for adoption, including information on the child's re-placement for adoption and final legal adoption;

(vi) The names of the agencies or persons that handled the placement for adoption; and

(vii) The plans for the child.

(4) Wherever possible, for each dissolution of a Convention adoption, information and reports on the dissolution, including information on:

(i) The Convention country from which the child emigrated;

(ii) The State to which the child immigrated;

(iii) The age of the child;

(iv) The date of the child's placement for adoption;

(v) The reason(s) for and resolution(s) of the dissolution of the adoption, to the extent known by the agency or person;

(vi) The names of the agencies or persons that handled the placement for adoption; and

(vii) The plans for the child.

(5) Information on the shortest, longest, and average length of time it takes to complete a Convention adoption, set forth by the child's country of origin, calculated from the time the child is matched with the prospective adoptive parent(s) until the time the adoption is finalized by a court, excluding any period for appeal;

(6) Information on the range of adoption fees, including the lowest, highest, average, and the median of such fees, set forth by the child's country of origin, charged by the agency or person for Convention adoptions involving children immigrating to the United States in connection with their adoption.

(c) If the agency or person provides adoption services in cases not subject to the Convention that involve a child emigrating from the United States for the purpose of adoption or after an adoption has been finalized, it provides such information as required by the Secretary directly to the Secretary and demonstrates to the accrediting entity that it has provided this information.

(d) The agency or person provides any of the information described in paragraphs (a) through (c) of this section to the accrediting entity or the Secretary within thirty days of request.

Service Planning and Delivery

§ 96.44 Acting as primary provider.

(a) When required by § 96.14(a), the agency or person acts as primary provider and adheres to the provisions in § 96.14(b) through (e). When acting as the primary provider, the agency or person develops and implements a service plan for providing all adoption services and provides all such services, either directly or through arrangements with supervised providers, exempted providers, public domestic authorities, competent authorities, Central Authorities, public foreign authorities, or, to the extent permitted by § 96.14(c), other foreign providers (agencies, persons, or other non-governmental entities).

(b) The agency or person has an organizational structure, financial and personnel resources, and policies and procedures in place that demonstrate that the agency or person is capable of

acting as a primary provider in any Convention adoption case and, when acting as the primary provider, provides appropriate supervision to supervised providers and verifies the work of other foreign providers in accordance with §§ 96.45 and 96.46.

§ 96.45 Using supervised providers in the United States.

(a) The agency or person, when acting as the primary provider and using supervised providers in the United States to provide adoption services, ensures that each such supervised provider:

(1) Is in compliance with applicable State licensing and regulatory requirements in all jurisdictions in which it provides adoption services;

(2) Does not engage in practices inconsistent with the Convention's principles of furthering the best interests of the child and preventing the sale, abduction, exploitation, or trafficking of children; and

(3) Before entering into an agreement with the primary provider for the provision of adoption services, discloses to the primary provider the suitability information listed in § 96.35.

(b) The agency or person, when acting as the primary provider and using supervised providers in the United States to provide adoption services, ensures that each such supervised provider operates under a written agreement with the primary provider that:

(1) Identifies clearly the adoption service(s) to be provided by the supervised provider and requires that the service(s) be provided in accordance with the applicable service standard(s) for accreditation and approval (for example: home study (§ 96.47); parent training (§ 96.48); child background studies and consent (§ 96.53));

(2) Requires the supervised provider to comply with the following standards regardless of the type of adoption services it is providing: § 96.36 (prohibition on child-buying), § 96.34 (compensation), § 96.38 (employee training), § 96.39(d) (waivers of liability), and § 96.41(b) through (e) (complaints);

(3) Identifies specifically the lines of authority between the primary provider and the supervised provider, the employee of the primary provider who will be responsible for supervision, and the employee of the supervised provider who will be responsible for ensuring compliance with the written agreement;

(4) States clearly the compensation arrangement for the services to be provided and the fees and expenses to be charged by the supervised provider;

(5) Specifies whether the supervised provider's fees and expenses will be billed to and paid by the client(s) directly or billed to the client through the primary provider;

(6) Provides that, if billing the client(s) directly for its service, the supervised provider will give the client(s) an itemized bill of all fees and expenses to be paid, with a written explanation of how and when such fees and expenses will be refunded if the service is not completed, and will return any funds collected to which the client(s) may be entitled within sixty days of the completion of the delivery of services;

(7) Requires the supervised provider to meet the same personnel qualifications as accredited agencies and approved persons, as provided for in § 96.37, except that, for purposes of §§ 96.37(e)(3), (f)(3), and (g)(2), the work of the employee must be supervised by an employee of an accredited agency or approved person;

(8) Requires the supervised provider to limit the use of and safeguard personal data gathered or transmitted in connection with an adoption, as provided for in § 96.42;

(9) Requires the supervised provider to respond within a reasonable period of time to any request for information from the primary provider, the Secretary, or the accrediting entity that issued the primary provider's accreditation or approval;

(10) Requires the supervised provider to provide the primary provider on a timely basis any data that is necessary to comply with the primary provider's reporting requirements;

(11) Requires the supervised provider to disclose promptly to the primary provider any changes in the suitability information required by § 96.35;

(12) Permits suspension or termination of the agreement on reasonable notice if the primary provider has grounds to believe that the supervised provider is not in compliance with the agreement or the requirements of this section.

§ 96.46 Using providers in Convention countries.

(a) The agency or person, when acting as the primary provider and using foreign supervised providers to provide adoption services in Convention countries, ensures that each such foreign supervised provider:

(1) Is in compliance with the laws of the Convention country in which it operates;

(2) Does not engage in practices inconsistent with the Convention's principles of furthering the best interests of the child and preventing the sale, abduction, exploitation, or trafficking of children;

(3) Before entering into an agreement with the primary provider for the provision of adoption services, discloses to the primary provider the suitability information listed in § 96.35, taking into account the authorities in the Convention country that are analogous to the authorities identified in that section;

(4) Does not have a pattern of licensing suspensions or other sanctions and has not lost the right to provide adoption services in any jurisdiction for reasons germane to the Convention; and

(5) Is accredited in the Convention country in which it operates, if such accreditation is required by the laws of that Convention country to perform the adoption services it is providing.

(b) The agency or person, when acting as the primary provider and using foreign supervised providers to provide adoption services in Convention countries, ensures that each such foreign supervised provider operates under a written agreement with the primary provider that:

(1) Identifies clearly the adoption service(s) to be provided by the foreign supervised provider;

(2) Requires the foreign supervised provider, if responsible for obtaining medical or social information on the child, to comply with the standards in § 96.49(d) through (j);

(3) Requires the foreign supervised provider to adhere to the standard in § 96.36(a) prohibiting child buying; and has written policies and procedures in place reflecting the prohibitions in § 96.36(a) and reinforces them in training programs for its employees and agents;

(4) Requires the foreign supervised provider to compensate its directors, officers, and employees who provide intercountry adoption services on a fee-for-service, hourly wage, or salary basis, rather than based on whether a child is placed for adoption, located for an adoptive placement, or on a similar contingent fee basis;

(5) Identifies specifically the lines of authority between the primary provider and the foreign supervised provider, the employee of the primary provider who will be responsible for supervision, and the employee of the supervised provider who will be responsible for ensuring compliance with the written agreement;

(6) States clearly the compensation arrangement for the services to be provided and the fees and expenses to be charged by the foreign supervised provider;

(7) Specifies whether the foreign supervised provider's fees and expenses will be billed to and paid by the client(s) directly or billed to the client through the primary provider;

(8) Provides that, if billing the client(s) directly for its service, the foreign supervised provider will give the client(s) an itemized bill of all fees and expenses to be paid, with a written explanation of how and when such fees and expenses will be refunded if the service is not completed, and will return any funds collected to which the client(s) may be entitled within sixty days of the completion of the delivery of services;

(9) Requires the foreign supervised provider to respond within a reasonable period of time to any request for information from the primary provider, the Secretary, or the accrediting entity that issued the primary provider's accreditation or approval;

(10) Requires the foreign supervised provider to provide the primary provider on a timely basis any data that is necessary to comply with the primary provider's reporting requirements;

(11) Requires the foreign supervised provider to disclose promptly to the primary provider any changes in the suitability information required by § 96.35; and

(12) Permits suspension or termination of the agreement on reasonable notice if the primary provider has grounds to believe that the foreign supervised provider is not in compliance with the agreement or the requirements of this section.

(c) The agency or person, when acting as the primary provider and, in accordance with § 96.14, using foreign providers that are not under its supervision, verifies, through review of the relevant documentation and other appropriate steps, that:

(1) Any necessary consent to termination of parental rights or to adoption obtained by the foreign provider was obtained in accordance with applicable foreign law and Article 4 of the Convention;

(2) Any background study and report on a child in a case involving immigration to the United States (an incoming case) performed by the foreign provider was performed in accordance with applicable foreign law and Article 16 of the Convention.

(3) Any home study and report on prospective adoptive parent(s) in a case involving emigration from the United States (an outgoing case) performed by the foreign provider was performed in accordance with applicable foreign law and Article 15 of the Convention.

Standards for Cases in Which a Child Is Immigrating to the United States (Incoming Cases)

§ 96.47 Preparation of home studies in incoming cases.

(a) The agency or person ensures that a home study on the prospective adoptive parent(s) (which for purposes of this section includes the initial report and any supplemental statement submitted to DHS) is completed that includes the following:

(1) Information about the prospective adoptive parent(s)' identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, and the characteristics of the children for whom the prospective adoptive parent(s) would be qualified to care (specifying in particular whether they are willing and able to care for a child with special needs);

(2) A determination whether the prospective adoptive parent(s) are eligible and suited to adopt;

(3) A statement describing the counseling and training provided to the prospective adoptive parent(s);

(4) The results of a criminal background check on the prospective adoptive parent(s) and any other individual for whom a check is required by 8 CFR 204.3(e);

(5) A full and complete statement of all facts relevant to the eligibility and suitability of the prospective adoptive parent(s) to adopt a child under any specific requirements identified to the Secretary by the Central Authority of the child's country of origin; and

(6) A statement in each copy of the home study that it is a true and accurate copy of the home study that was provided to the prospective adoptive parent(s) or DHS.

(b) The agency or person ensures that the home study is performed in accordance with 8 CFR 204.3(e), and any applicable State law.

(c) Where the home study is not performed in the first instance by an accredited agency or temporarily accredited agency, the agency or person ensures that the home study is reviewed and approved in writing by an accredited agency or temporarily accredited agency. The written approval must include a determination that the home study:

(1) Includes all of the information required by paragraph (a) of this section and is performed in accordance with 8 CFR 204.3(e), and applicable State law; and

(2) Was performed by an individual who meets the requirements in § 96.37(f), or, if the individual is an exempted provider, ensures that the individual meets the requirements for home study providers established by 8 CFR 204.3(b).

(d) The agency or person takes all appropriate measures to ensure the timely transmission of the same home study that was provided to the prospective adoptive parent(s) or to DHS to the Central Authority of the child's country of origin (or to an alternative authority designated by that Central Authority).

§ 96.48 Preparation and training of prospective adoptive parent(s) in incoming cases.

(a) The agency or person provides prospective adoptive parent(s) with at least ten hours (independent of the home study) of preparation and training, as described in paragraphs (b) and (c) of this section, designed to promote a successful intercountry adoption. The agency or person provides such training before the prospective adoptive parent(s) travel to adopt the child or the child is placed with the prospective adoptive parent(s) for adoption.

(b) The training provided by the agency or person addresses the following topics:

(1) The intercountry adoption process, the general characteristics and needs of children awaiting adoption, and the in-country conditions that affect children in the Convention country from which the prospective adoptive parent(s) plan to adopt;

(2) The effects on children of malnutrition, relevant environmental toxins, maternal substance abuse, and of any other known genetic, health, emotional, and developmental risk factors associated with children from the expected country of origin;

(3) Information about the impact on a child of leaving familiar ties and surroundings, as appropriate to the expected age of the child;

(4) Data on institutionalized children and the impact of institutionalization on children, including the effect on children of the length of time spent in an institution and of the type of care provided in the expected country of origin;

(5) Information on attachment disorders and other emotional problems that institutionalized or traumatized children and children with a history of multiple caregivers may experience, before and after their adoption;

(6) Information on the laws and adoption processes of the expected country of origin, including foreseeable delays and impediments to finalization of an adoption;

(7) Information on the long-term implications for a family that has become multicultural through intercountry adoption; and

(8) An explanation of any reporting requirements associated with Convention adoptions, including any post-placement or post-adoption reports required by the expected country of origin.

(c) The agency or person also provides the prospective adoptive parent(s) with training that allows them to be as fully prepared as possible for the adoption of a particular child. This includes counseling on:

(1) The child's history and cultural, racial, religious, ethnic, and linguistic background;

(2) The known health risks in the specific region or country where the child resides; and

(3) Any other medical, social, background, birth history, educational data, developmental history, or any other data known about the particular child.

(d) The agency or person provides such training through appropriate methods, including:

(1) Collaboration among agencies or persons to share resources to meet the training needs of prospective adoptive parents;

(2) Group seminars offered by the agency or person or other agencies or training entities;

(3) Individual counseling sessions;

(4) Video, computer-assisted, or distance learning methods using standardized curricula; or

(5) In cases where training cannot otherwise be provided, an extended home study process, with a system for evaluating the thoroughness with which the topics have been covered.

(e) The agency or person provides additional in-person, individualized counseling and preparation, as needed, to meet the needs of the prospective adoptive parent(s) in light of the particular child to be adopted and his or her special needs, and any other training or counseling needed in light of the child background study or the home study.

(f) The agency or person provides the prospective adoptive parent(s) with information about print, internet, and other resources available for continuing to acquire information about common behavioral, medical, and other issues; connecting with parent support groups, adoption clinics and experts; and seeking appropriate help when needed.

(g) The agency or person exempts prospective adoptive parent(s) from all or part of the training and preparation that would normally be required for a specific adoption only when the agency or person determines that the prospective adoptive parent(s) have received adequate prior training or have prior experience as parent(s) of children adopted from abroad.

(h) The agency or person records the nature and extent of the training and preparation provided to the prospective adoptive parent(s) in the adoption record.

§ 96.49 Provision of medical and social information in incoming cases.

(a) The agency or person provides a copy of the child's medical records (including, to the fullest extent practicable, a correct and complete English-language translation of such records) to the prospective adoptive parent(s) as early as possible, but no later than two weeks before either the adoption or placement for adoption, or the date on which the prospective adoptive parent(s) travel to the Convention country to complete all procedures in such country relating to the adoption or placement for adoption, whichever is earlier.

(b) Where any medical record provided pursuant to paragraph (a) of this section is a summary or compilation of other medical records, the agency or person includes those underlying medical records in the medical records provided pursuant to paragraph (a) if they are available.

(c) The agency or person provides the prospective adoptive parent(s) with any untranslated medical reports or videotapes or other reports and provides an opportunity for the client(s) to arrange for their own translation of the records, including a translation into a language other than English, if needed.

(d) The agency or person itself uses reasonable efforts, or requires its supervised provider in the child's country of origin who is responsible for obtaining medical information about the child on behalf of the agency or person to use reasonable efforts, to obtain available information, including in particular:

(1) The date that the Convention country or other child welfare authority assumed custody of the child and the child's condition at that time;

(2) History of any significant illnesses, hospitalizations, special needs, and changes in the child's condition since the Convention country or other child welfare authority assumed custody of the child;

(3) Growth data, including prenatal and birth history, and developmental status over time and current developmental data at the time of the child's referral for adoption; and

(4) Specific information on the known health risks in the specific region or country where the child resides.

(e) If the agency or person provides medical information, other than the information provided by public foreign authorities, to the prospective adoptive parent(s) from an examination by a physician or from an observation of the child by someone who is not a physician, the agency or person uses reasonable efforts to include the following:

(1) The name and credentials of the physician who performed the examination or the individual who observed the child;

(2) The date of the examination or observation; how the report's information was retained and verified; and if anyone directly responsible for the child's care has reviewed the report;

(3) If the medical information includes references, descriptions, or observations made by any individual other than the physician who performed the examination or the individual who performed the observation, the identity of that individual, the individual's training, and information on what data and perceptions the individual used to draw his or her conclusions;

(4) A review of hospitalizations, significant illnesses, and other significant medical events, and the reasons for them;

(5) Information about the full range of any tests performed on the child, including tests addressing known risk factors in the child's country of origin; and

(6) Current health information.

(f) The agency or person itself uses reasonable efforts, or requires its supervised provider in the child's country of origin who is responsible for obtaining social information about the child on behalf of the agency or person to use reasonable efforts, to obtain available information, including in particular:

(1) Information about the child's birth family and prenatal history and cultural, racial, religious, ethnic, and linguistic background;

(2) Information about all of the child's past and current placements prior to adoption, including, but not limited to any social work or court reports on the child and any information on who assumed custody and provided care for the child; and

(3) Information about any birth siblings whose existence is known to the agency or person, or its supervised provider, including information about such siblings' whereabouts.

(g) Where any of the information listed in paragraphs (d) and (f) of this

section cannot be obtained, the agency or person documents in the adoption record the efforts made to obtain the information and why it was not obtainable. The agency or person continues to use reasonable efforts to secure those medical or social records that could not be obtained up until the adoption is finalized.

(h) Where available, the agency or person provides information for contacting the examining physician or the individual who made the observations to any physician engaged by the prospective adoptive parent(s), upon request.

(i) The agency or person ensures that videotapes and photographs of the child are identified by the date on which the videotape or photograph was recorded or taken and that they were made in compliance with the laws in the country where recorded or taken.

(j) The agency or person does not withhold from or misrepresent to the prospective adoptive parent(s) any available medical, social, or other pertinent information concerning the child.

(k) The agency or person does not withdraw a referral until the prospective adoptive parent(s) have had two weeks (unless extenuating circumstances involving the child's best interests require a more expedited decision) to consider the needs of the child and their ability to meet those needs, and to obtain physician review of medical information and other descriptive information, including videotapes of the child if available.

§ 96.50 Placement and post-placement monitoring until final adoption in incoming cases.

(a) The agency or person takes all appropriate measures to ensure that the transfer of the child takes place in secure and appropriate circumstances, with properly trained and qualified escorts, if used, and, if possible, in the company of the prospective adoptive parent(s).

(b) In the post-placement phase, the agency or person monitors and supervises the child's placement to ensure that the placement remains in the best interests of the child, and ensures that at least the number of home visits required by State law or by the child's country of origin are performed, whichever is greater.

(c) When a placement for adoption is in crisis in the post-placement phase, the agency or person makes an effort to provide or arrange for counseling by an individual with appropriate skills to assist the family in dealing with the problems that have arisen.

(d) If counseling does not succeed in resolving the crisis and the placement is disrupted, the agency or person assuming custody of the child assumes responsibility for making another placement of the child.

(e) The agency or person acts promptly and in accord with any applicable legal requirements to remove the child when the placement may no longer be in the child's best interests, to provide temporary care, to find an eventual adoptive placement for the child, and, in consultation with the Secretary, to inform the Central Authority of the child's country of origin about any new prospective adoptive parent(s).

(1) In all cases where removal of a child from a placement is considered, the agency or person considers the child's views when appropriate in light of the child's age and maturity and, when required by State law, obtains the consent of the child prior to removal.

(2) The agency or person does not return from the United States a child placed for adoption in the United States unless the Central Authority of the country of origin and the Secretary have approved the return in writing.

(f) The agency or person includes in the adoption services contract with the prospective adoptive parent(s) a plan describing the agency's or person's responsibilities if a placement for adoption is disrupted. This plan addresses:

(1) Who will have legal and financial responsibility for transfer of custody in an emergency or in the case of impending disruption and for the care of the child;

(2) If the disruption takes place after the child has arrived in the United States, under what circumstances the child will, as a last resort, be returned to the child's country of origin, if that is determined to be in the child's best interests;

(3) How the child's wishes, age, length of time in the United States, and other pertinent factors will be taken into account; and

(4) How the Central Authority of the child's country of origin and the Secretary will be notified.

(g) The agency or person provides post-placement reports until final adoption of a child to the Convention country when required by the Convention country. Where such reports are required, the agency or person:

(1) Informs the prospective adoptive parent(s) in the adoption services contract of the requirement prior to the referral of the child for adoption;

(2) Informs the prospective adoptive parent(s) that they will be required to provide all necessary information for the report(s); and

(3) Discloses who will prepare the reports and the fees that will be charged.

(h) The agency or person takes steps to:

(1) Ensure that an order declaring the adoption as final is sought by the prospective adoptive parent(s), and entered in compliance with section 301(c) of the IAA (42 U.S.C. 14931(c)); and

(2) Notify the Secretary of the finalization of the adoption within thirty days of the entry of the order.

§ 96.51 Post-adoption services in incoming cases.

(a) The agency or person takes all appropriate measures to ensure that the transfer of the child takes place in secure and appropriate circumstances, with properly trained and qualified escorts, if used, and, if possible, in the company of the adoptive parent(s).

(b) The agency or person informs the prospective adoptive parent(s) in the adoption services contract whether the agency or person will or will not provide any post-adoption services. The agency or person also informs the prospective adoptive parent(s) in the adoption services contract whether it will provide services if an adoption is dissolved, and, if it indicates it will, it provides a plan describing the agency's or person's responsibilities.

(c) When post-adoption reports are required by the child's country of origin, the agency or person includes a requirement for such reports in the adoption services contract and makes good-faith efforts to encourage adoptive parent(s) to provide such reports.

(d) The agency or person does not return from the United States an adopted child whose adoption has been dissolved unless the Central Authority of the country of origin and the Secretary have approved the return in writing.

§ 96.52 Performance of Convention communication and coordination functions in incoming cases.

(a) The agency or person keeps the Central Authority of the Convention country and the Secretary informed as necessary about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

(b) The agency or person takes all appropriate measures, consistent with the procedures of the U.S. Central Authority and of the Convention country, to:

(1) Transmit on a timely basis the home study to the Central Authority or

other competent authority of the child's country of origin;

(2) Obtain the child background study, proof that the necessary consents to the child's adoption have been obtained, and the necessary determination that the prospective placement is in the child's best interests, from the Central Authority or other competent authority in the child's country of origin;

(3) Provide confirmation that the prospective adoptive parent(s) agree to the adoption to the Central Authority or other competent authority in the child's country of origin; and

(4) Transmit the determination that the child is or will be authorized to enter and reside permanently in the United States to the Central Authority or other competent authority in the child's country of origin.

(c) The agency or person takes all necessary and appropriate measures, consistent with the procedures of the Convention country, to obtain permission for the child to leave his or her country of origin and to enter and reside permanently in the United States.

(d) Where the transfer of the child does not take place, the agency or person returns the home study on the prospective adoptive parent(s) and/or the child background study to the authorities that forwarded them.

(e) The agency or person takes all necessary and appropriate measures to perform any tasks in a Convention adoption case that the Secretary identifies are required to comply with the Convention, the IAA, or any regulations implementing the IAA.

Standards for Cases in Which a Child Is Emigrating From the United States (Outgoing Cases)

§ 96.53 Background studies on the child and consents in outgoing cases.

(a) The agency or person takes all appropriate measures to ensure that a child background study is performed that includes information about the child's identity, adoptability, background, social environment, family history, medical history (including that of the child's family), and any special needs of the child. The child background study must include the following:

(1) Information that demonstrates that consents were obtained in accordance with paragraph (c) of this section;

(2) Information that demonstrates consideration of the child's wishes and opinions in accordance with paragraph (d) of this section and;

(3) Information that confirms that the child background study was prepared either by an exempted provider or by an individual who meets the requirements set forth in § 96.37(g).

(b) Where the child background study is not prepared in the first instance by an accredited agency or temporarily accredited agency, the agency or person ensures that the child background study is reviewed and approved in writing by an accredited agency or temporarily accredited agency. The written approval must include a determination that the background study includes all the information required by paragraph (a) of this section.

(c) The agency or person takes all appropriate measures to ensure that consents have been obtained as follows:

(1) The persons, institutions, and authorities whose consent is necessary for adoption have been counseled as necessary and duly informed of the effects of their consent, in particular, whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin;

(2) All such persons, institutions, and authorities have given their consents;

(3) The consents have been expressed or evidenced in writing in the required legal form, have been given freely, were not induced by payments or compensation of any kind, and have not been withdrawn;

(4) The consent of the mother, where required, was executed after the birth of the child;

(5) The child, as appropriate in light of his or her age and maturity, has been counseled and duly informed of the effects of the adoption and of his or her consent to the adoption; and

(6) The child's consent, where required, has been given freely, in the required legal form, and expressed or evidenced in writing and not induced by payment or compensation of any kind.

(d) If the child is twelve years of age or older, or as otherwise provided by State law, the agency or person gives due consideration to the child's wishes or opinions before determining that an intercountry placement is in the child's best interests.

(e) The agency or person prior to the child's adoption takes all appropriate measures to transmit to the Central Authority or other competent authority or accredited bodies of the Convention country the child background study, proof that the necessary consents have been obtained, and the reasons for its determination that the placement is in the child's best interests. In doing so, the agency or person, as required by Article 16(2) of the Convention, does not reveal the identity of the mother or the father if these identities may not be disclosed under State law.

§ 96.54 Placement standards in outgoing cases.

(a) Except in the case of adoption by relatives or in the case in which the birth parent(s) have identified specific prospective adoptive parent(s) or in other special circumstances accepted by the State court with jurisdiction over the case, the agency or person makes reasonable efforts to find a timely adoptive placement for the child in the United States by:

(1) Disseminating information on the child and his or her availability for adoption through print, media, and internet resources designed to communicate with potential prospective adoptive parent(s) in the United States;

(2) Listing information about the child on a national or State adoption exchange or registry for at least sixty calendar days after the birth of the child;

(3) Responding to inquiries about adoption of the child; and

(4) Providing a copy of the child background study to potential U.S. prospective adoptive parent(s).

(b) The agency or person demonstrates to the satisfaction of the State court with jurisdiction over the adoption that sufficient reasonable efforts (including no efforts, when in the best interests of the child) to find a timely and qualified adoptive placement for the child in the United States were made.

(c) In placing the child for adoption, the agency or person:

(1) To the extent consistent with State law, gives significant weight to the placement preferences expressed by the birth parent(s) in all voluntary placements;

(2) To the extent consistent with State law, makes diligent efforts to place siblings together for adoption and, where placement together is not possible, to arrange for contact between separated siblings, unless it is in the best interests of one of the siblings that such efforts or contact not take place; and

(3) Complies with all applicable requirements of the Indian Child Welfare Act.

(d) The agency or person complies with any State law requirements pertaining to the provision and payment of independent legal counsel for birth parents. If State law requires full disclosure to the birth parent(s) that the child is to be adopted by parent(s) who reside outside the United States, the agency or person provides such disclosure.

(e) The agency or person takes all appropriate measures to give due consideration to the child's upbringing and to his or her ethnic, religious, and cultural background.

(f) When particular prospective adoptive parent(s) in a Convention country have been identified, the agency or person takes all appropriate measures to determine whether the envisaged placement is in the best interests of the child, on the basis of the child background study and the home study on the prospective adoptive parent(s).

(g) The agency or person thoroughly prepares the child for the transition to the Convention country, using age-appropriate services that address the child's likely feelings of separation, grief, and loss and difficulties in making any cultural, religious, racial, ethnic, or linguistic adjustment.

(h) The agency or person takes all appropriate measures to ensure that the transfer of the child takes place in secure and appropriate circumstances, with properly trained and qualified escorts, if used, and, if possible, in the company of the adoptive parent(s) or the prospective adoptive parent(s);

(i) Before the placement for adoption proceeds, the agency or person identifies the entity in the receiving country that will provide post-placement supervision and reports, if required by State law, and ensures that the child's adoption record contains the information necessary for contacting that entity.

(j) The agency or person ensures that the child's adoption record includes the order granting the adoption or legal custody for the purpose of adoption in the Convention country.

(k) The agency or person consults with the Secretary before arranging for the return to the United States of any child who has emigrated to a Convention country in connection with the child's adoption.

§ 96.55 Performance of Convention communication and coordination functions in outgoing cases.

(a) The agency or person keeps the Central Authority of the Convention country and the Secretary informed as necessary about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

(b) The agency or person ensures that:

(1) Copies of all documents from the State court proceedings, including the order granting the adoption or legal custody, are provided to the Secretary;

(2) Any additional information on the adoption is transmitted to the Secretary promptly upon request; and

(3) It otherwise facilitates, as requested, the Secretary's ability to provide the certification that the child has been adopted or that custody has been granted for the purpose of adoption, in accordance with the Convention and the IAA.

(c) Where the transfer of the child does not take place, the agency or person returns the home study on the prospective adoptive parent(s) and/or the child background study to the authorities that forwarded them.

(d) The agency or person provides to the State court with jurisdiction over the adoption:

(1) Proof that consents have been given as required in § 96.53(c);

(2) An English copy or certified English translation of the home study on the prospective adoptive parent(s) in the Convention country, and the determination by the agency or person that the placement with the prospective adoptive parent(s) is in the child's best interests;

(3) Evidence that the prospective adoptive parent(s) in the Convention country agree to the adoption;

(4) Evidence that the child will be authorized to enter and reside permanently in the Convention country or on the same basis as that of the prospective adoptive parent(s); and

(5) Evidence that the Central Authority of the Convention country has agreed to the adoption, if such consent is necessary under its laws for the adoption to become final.

(e) The agency or person makes the showing required by § 96.54(b) to the State court with jurisdiction over the adoption.

(f) The agency or person takes all necessary and appropriate measures to perform any tasks in a Convention adoption case that the Secretary identifies are required to comply with the Convention, the IAA, or any regulations implementing the IAA.

§ 96.56 [Reserved]

Subpart G—Decisions on Applications for Accreditation or Approval

§ 96.57 Scope.

The provisions in this subpart establish the procedures for when the accrediting entity issues decisions on applications for accreditation or approval. Temporary accreditation is governed by the provisions in subpart N of this part. Unless otherwise provided in subpart N of this part, the provisions in this subpart do not apply to agencies seeking temporary accreditation.

§ 96.58 Notification of accreditation and approval decisions.

(a) The accrediting entity must notify agencies and persons that applied by the transitional application deadline of its accreditation and approval decisions on a uniform notification date to be established by the Secretary. On that date, the accrediting entity must inform each applicant and the Secretary in writing whether the agency's or person's application has been granted or denied or remains pending. The accrediting entity may not provide any information about its accreditation or approval decisions to any agency or person or to the public until the uniform notification date. If the Secretary requests information on the interim or final status of an applicant prior to the uniform notification date, the accrediting entity must provide such information to the Secretary.

(b) Notwithstanding the provisions in paragraph (a) of this section, the accrediting entity may, in its discretion, communicate with agencies and persons that applied by the transitional application date about the status of their pending applications for the sole purpose of affording them an opportunity to correct deficiencies that may hinder or prevent accreditation or approval.

(c) The accrediting entity must routinely inform applicants that applied after the transitional application date in writing of its accreditation and approval decisions, as those decisions are finalized, but may not do so earlier than the uniform notification date referenced in paragraph (a) of this section. The accrediting entity must routinely provide this information to the Secretary in writing.

§ 96.59 Review of decisions to deny accreditation or approval.

(a) There is no administrative or judicial review of an accrediting entity's decision to deny an application for accreditation or approval. As provided in § 96.79, a decision to deny for these purposes includes:

(1) A denial of the agency's or person's initial application for accreditation or approval;

(2) A denial of an application made after cancellation or refusal to renew by the accrediting entity; and

(3) A denial of an application made after cancellation or debarment by the Secretary.

(b) The agency or person may petition the accrediting entity for reconsideration of a denial. The accrediting entity must establish internal review procedures that provide an opportunity for an agency or person

to petition for reconsideration of the denial.

§ 96.60 Length of accreditation or approval period.

(a) Except as provided in paragraph (b) of this section, the accrediting entity will accredit or approve an agency or person for a period of four years. The accreditation or approval period will commence either on the date the Convention enters into force for the United States (if the agency or person is accredited or approved before that date) or on the date that the agency or person is granted accreditation or approval.

(b) In order to stagger the renewal requests from agencies and persons that applied for accreditation or approval by the transitional application deadline, to prevent renewal requests from coming due at the same time, the accrediting entity may accredit or approve some agencies and persons that applied by the transitional application date for a period of between three and five years for their first accreditation or approval cycle. The accrediting entity must establish criteria, to be approved by the Secretary, for choosing which agencies and persons it will accredit or approve for a period of other than four years.

§ 96.61 [Reserved]

Subpart H—Renewal of Accreditation or Approval

§ 96.62 Scope.

The provisions in this subpart establish the procedures for renewal of an agency's accreditation or a person's approval. Temporary accreditation may not be renewed, and the provisions in this subpart do not apply to temporarily accredited agencies.

§ 96.63 Renewal of accreditation or approval.

(a) The accrediting entity must advise accredited agencies and approved persons that it monitors of the date by which they should seek renewal of their accreditation or approval so that the renewal process can reasonably be completed prior to the expiration of the agency's or person's current accreditation or approval. If the accredited agency or approved person does not wish to renew its accreditation or approval, it must immediately notify the accrediting entity and take all necessary steps to complete its Convention cases and to transfer its pending Convention cases and adoption records to other accredited agencies, approved persons, or a State archive, as appropriate, under the oversight of the accrediting entity, before its accreditation or approval expires.

(b) The accredited agency or approved person may seek renewal from a different accrediting entity than the one that handled its prior application. If it changes accrediting entities, the accredited agency or approved person must so notify the accrediting entity that handled its prior application by the date on which the agency or person must (pursuant to paragraph (a) of this section) seek renewal of its status. The accredited agency or approved person must follow the new accrediting entity's instructions when submitting a request for renewal and preparing documents and other information for the new accrediting entity to review in connection with the renewal request.

(c) The accrediting entity must process the request for renewal in a timely fashion. Before deciding whether to renew the accreditation or approval of an agency or person, the accrediting entity may, in its discretion, advise the agency or person of any deficiencies that may hinder or prevent its renewal and defer a decision to allow the agency or person to correct the deficiencies. The accrediting entity must notify the accredited agency, approved person, and the Secretary in writing when it renews or refuses to renew an agency's or person's accreditation or approval.

(d) Sections 96.24, 96.25, and 96.26, which relate to evaluation procedures and to requests for and use of information, and § 96.27, which relates to the substantive criteria for evaluating applicants for accreditation or approval, other than § 96.27(e), will govern determinations about whether to renew accreditation or approval. In lieu of § 96.27(e), if the agency or person has been suspended by an accrediting entity or the Secretary during its most current accreditation or approval cycle, the accrediting entity may take the reasons underlying the suspension into account when determining whether to renew accreditation or approval and may refuse to renew accreditation or approval based on the prior suspension.

§ 96.64 [Reserved]

Subpart I—Routine Oversight by Accrediting Entities

§ 96.65 Scope.

The provisions in this subpart establish the procedures for routine oversight of accredited agencies and approved persons. Temporary accreditation is governed by the provisions of subpart N of this part. Unless otherwise provided in subpart N of this part, the provisions in this subpart do not apply to temporarily accredited agencies.

§ 96.66 Oversight of accredited agencies and approved persons by the accrediting entity.

(a) The accrediting entity must monitor agencies it has accredited and persons it has approved at least annually to ensure that they are in substantial compliance with the standards in subpart F of this part, as determined using a method approved by the Secretary in accordance with § 96.27(d). The accrediting entity must investigate complaints about accredited agencies and approved persons, as provided in subpart J of this part.

(b) An accrediting entity may, on its own initiative, conduct site visits to inspect an agency's or person's premises or programs, with or without advance notice, for purposes of random verification of its continued compliance or to investigate a complaint. The accrediting entity may consider any information about the agency or person that becomes available to it about the compliance of the agency or person. The provisions of §§ 96.25 and 96.26 govern requests for and use of information.

(c) The accrediting entity must require accredited agencies or approved persons to attest annually that they have remained in substantial compliance and to provide supporting documentation to indicate such ongoing compliance with the standards in subpart F of this part.

§ 96.67 [Reserved]

Subpart J—Oversight Through Review of Complaints

§ 96.68 Scope.

The provisions in this subpart establish the procedures that the accrediting entity will use for processing complaints against accredited agencies and approved persons (including complaints concerning their use of supervised providers) that raise an issue of compliance with the Convention, the IAA, or the regulations implementing the IAA, as determined by the accrediting entity or the Secretary, and that are therefore relevant to the oversight functions of the accrediting entity or the Secretary. Temporary accreditation is governed by the provisions of subpart N of this part; as provided in § 96.103, procedures for processing complaints on temporarily accredited agencies must comply with this subpart.

§ 96.69 Filing of complaints against accredited agencies and approved persons.

(a) Complaints described in § 96.68 will be subject to review by the accrediting entity pursuant to §§ 96.71

and 96.72, when submitted as provided in this section and § 96.70.

(b) Complaints against accredited agencies and approved persons by parties to specific Convention adoption cases and relating to that case must first be submitted by the complainant in writing to the primary provider and to the agency or person providing adoption services, if a U.S. provider different from the primary provider. If the complaint cannot be resolved through the complaint processes of the primary provider or the agency or person providing the services (if different), or if the complaint was resolved by an agreement to take action but the primary provider or the agency or person providing the service (if different) failed to take such action within thirty days of agreeing to do so, the complaint may then be filed with the Complaint Registry in accordance with § 96.70.

(c) An individual who is not party to a specific Convention adoption case but who has information about an accredited agency or approved person may provide that information by filing it in the form of a complaint with the Complaint Registry in accordance with § 96.70.

(d) A Federal, State, or local government official or a foreign Central Authority may file a complaint with the Complaint Registry in accordance with § 96.70, or may raise the matter in writing directly with the accrediting entity, who will record the complaint in the Complaint Registry, or with the Secretary, who will record the complaint in the Complaint Registry, if appropriate, and refer it to the accrediting entity for review pursuant to § 96.71 or take such other action as the Secretary deems appropriate.

§ 96.70 Operation of the Complaint Registry.

(a) The Secretary will establish a Complaint Registry to support the accrediting entities in fulfilling their oversight responsibilities, including the responsibilities of recording, screening, referring, and otherwise taking action on complaints received, and to support the Secretary in the Secretary's oversight responsibilities as the Secretary deems appropriate. The Secretary may provide for the Complaint Registry to be funded in whole or in part from fees collected by the Secretary pursuant to section 403(b) of the IAA (42 U.S.C. 14943(b)) or by the accrediting entities.

(b) The Complaint Registry will:

(1) Receive and maintain records of complaints about accredited agencies, temporarily accredited agencies, and approved persons (including complaints concerning their use of supervised providers) and make such complaints available to the appropriate accrediting entity and the Secretary;

(2) Receive and maintain information regarding action taken to resolve each complaint by the accrediting entity or the Secretary;

(3) Track compliance with any deadlines applicable to the resolution of complaints;

(4) Generate reports designed to show possible patterns of complaints; and

(5) Perform such other functions as the Secretary may determine.

(c) Forms and information necessary to submit complaints to the Complaint Registry electronically or by such other means as the Secretary may determine will be accessible through the Department's website to persons who wish to file complaints. Such forms will be designed to ensure that each complaint complies with the requirements of § 96.69.

(d) Accrediting entities will have access to, and the capacity to enter data into, the Complaint Registry as the Secretary deems appropriate.

(e) Nothing in this part shall be construed to limit the Secretary's authority to take such action as the Secretary deems appropriate with respect to complaints.

§ 96.71 Review by the accrediting entity of complaints against accredited agencies and approved persons.

(a) The accrediting entity must establish written procedures, including deadlines, for recording, investigating, and acting upon complaints it receives pursuant to §§ 96.69 and 96.70(b)(1). The procedures must be consistent with this section and be approved by the Secretary. The accrediting entity must make written information about its complaint procedures available upon request.

(b) If the accrediting entity determines that a complaint implicates the Convention, the IAA, or the regulations implementing the IAA:

(1) The accrediting entity must verify that the complainant has already attempted to resolve the complaint as described in § 96.69(b) and, if not, may refer the complaint to the agency or person, or to the primary provider, for attempted resolution through its internal complaint procedures;

(2) The accrediting entity may conduct whatever investigative activity (including site visits) it considers necessary to determine whether any relevant accredited agency or approved person may maintain accreditation or approval as provided in § 96.27. The provisions of §§ 96.25 and 96.26 govern requests for and use of information. The accrediting entity must give priority to complaints submitted pursuant to § 96.69(d);

(3) If the accrediting entity determines that the agency or person may not maintain accreditation or approval, it must take adverse action pursuant to subpart K of this part.

(c) When the accrediting entity has completed its complaint review process, it must provide written notification of the outcome of its investigation, and any actions taken, to the complainant, or to any other entity that referred the information.

(d) The accrediting entity will enter information about the outcomes of its investigations and its actions on complaints into the Complaint Registry as provided in its agreement with the Secretary.

(e) The accrediting entity may not take any action to discourage an individual from, or retaliate against an individual for, making a complaint, expressing a grievance, questioning the conduct of, or expressing an opinion about the performance of an accredited agency, an approved person, or the accrediting entity.

§ 96.72 Referral of complaints to the Secretary and other authorities.

(a) An accrediting entity must report promptly to the Secretary any substantiated complaint that:

(1) Reveals that an accredited agency or approved person has engaged in a pattern of serious, willful, grossly negligent, or repeated failures to comply with the standards in subpart F of this part; or

(2) Indicates that continued accreditation or approval would not be in the best interests of the children and families concerned.

(b) An accrediting entity must, after consultation with the Secretary, refer, as appropriate, to a State licensing authority, the Attorney General, or other law enforcement authorities any substantiated complaints that involve conduct that is:

(1) Subject to the civil or criminal penalties imposed by section 404 of the IAA (42 U.S.C. 14944);

(2) In violation of the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*); or

(3) Otherwise in violation of Federal, State, or local law.

(c) When an accrediting entity makes a report pursuant to paragraphs (a) or (b) of this section, it must indicate whether it is recommending that the Secretary take action to debar the agency or person, either temporarily or permanently.

§ 96.73 [Reserved]

Subpart K—Adverse Action by the Accrediting Entity

§ 96.74 Scope.

The provisions in this subpart establish the procedures governing adverse action by an accrediting entity against accredited agencies and approved persons. Temporary accreditation is governed by the provisions in subpart N of this part. Unless otherwise provided in subpart N of this part, the provisions of this subpart do not apply to temporarily accredited agencies.

§ 96.75 Adverse action against accredited agencies or approved persons not in substantial compliance.

The accrediting entity must take adverse action when it determines that an accredited agency or approved person may not maintain accreditation or approval as provided in § 96.27. The accrediting entity is authorized to take any of the following actions against an accredited agency or approved person whose compliance the entity oversees. Each of these actions by an accrediting entity is considered an adverse action for purposes of the IAA and the regulations in this part:

(a) Suspending accreditation or approval;

(b) Canceling accreditation or approval;

(c) Refusing to renew accreditation or approval;

(d) Requiring an accredited agency or approved person to take a specific corrective action to bring itself into compliance; and

(e) Imposing other sanctions including, but not limited to, requiring an accredited agency or approved person to cease providing adoption services in a particular case or in a specific Convention country.

§ 96.76 Procedures governing adverse action by the accrediting entity.

(a) The accrediting entity must decide which adverse action to take based on the seriousness and type of violation and on the extent to which the accredited agency or approved person has corrected or failed to correct deficiencies of which it has been previously informed. The accrediting entity must notify an accredited agency or approved person in writing of its decision to take an adverse action against the agency or person. The accrediting entity's written notice must identify the deficiencies prompting imposition of the adverse action.

(b) Before taking adverse action, the accrediting entity may, in its discretion, advise an accredited agency or approved person in writing of any deficiencies in its performance that may warrant an adverse action and provide it with an opportunity to demonstrate that an adverse action would be unwarranted before the adverse action is imposed. If the accrediting entity takes the adverse action without such prior notice, it must provide a similar opportunity to demonstrate that the adverse action was unwarranted after the adverse action is imposed, and may withdraw the adverse action based on the information provided.

(c) The provisions in §§ 96.25 and 96.26 govern requests for and use of information.

§ 96.77 Responsibilities of the accredited agency, approved person, and accrediting entity following adverse action by the accrediting entity.

(a) If the accrediting entity takes an adverse action against an agency or person, the action will take effect immediately unless the accrediting entity agrees to a later effective date.

(b) If the accrediting entity suspends or cancels the accreditation or approval of an agency or person, the agency or person must immediately, or by any later effective date set by the accrediting entity, cease to provide adoption services in all Convention cases. In the case of suspension, it must consult with the accrediting entity about whether to transfer its Convention adoption cases and adoption records. In the case of cancellation, it must execute the plans required by §§ 96.33(e) and 96.42(d) under the oversight of the accrediting entity, and transfer its Convention adoption cases and adoption records to other accredited agencies, approved persons, or a State archive, as appropriate. When the agency or person is unable to transfer such Convention cases or adoption records in accordance with the plans or as otherwise agreed by the accrediting entity, the accrediting entity will so advise the Secretary who, with the assistance of the accrediting entity, will coordinate efforts to identify other accredited agencies or approved persons to assume responsibility for the cases, and to transfer the records to other accredited agencies or approved persons, or to public domestic authorities, as appropriate.

(c) If the accrediting entity refuses to renew the accreditation or approval of an agency or person, the agency or person must cease to provide adoption services in all Convention cases upon expiration of its existing accreditation or approval. It must take all necessary steps to complete its Convention cases before its accreditation or approval expires. It must also execute the plans required by §§ 96.33(e) and 96.42(d) under the oversight of the accrediting entity, and transfer its pending Convention cases and adoption records to other accredited agencies, approved persons, or a State archive, as appropriate. When the agency or person is unable to transfer such Convention cases or adoption records in accordance with the plans or as otherwise agreed by the accrediting entity, the accrediting entity will so advise the Secretary who, with the assistance of the accrediting entity, will coordinate efforts to identify other accredited agencies or approved persons to assume responsibility for the cases and to transfer the records to other accredited agencies or approved persons, or to public domestic authorities, as appropriate.

(d) The accrediting entity must notify the Secretary, in accordance with procedures established in its agreement with the Secretary, when it takes an adverse action that changes the accreditation or approval status of an agency or person. The accrediting entity must also notify the relevant State licensing authority as provided in the agreement.

§ 96.78 Accrediting entity procedures to terminate adverse action.

(a) The accrediting entity must maintain internal petition procedures, approved by the Secretary, to give accredited agencies and approved persons an opportunity to terminate adverse actions on the grounds that the deficiencies necessitating the adverse action have been corrected. The accrediting entity must inform the agency or person of these procedures when it informs them of the adverse action pursuant to § 96.76(a). An accrediting entity is not required to maintain procedures to terminate adverse actions on any other grounds, or to maintain procedures to review its adverse actions, and must obtain the consent of the Secretary if it wishes to make such procedures available.

(b) An accrediting entity may terminate an adverse action it has taken only if the agency or person demonstrates to the satisfaction of the accrediting entity that the deficiencies that led to the adverse action have been corrected. The accrediting entity must notify an agency or person in writing of its decision on the petition to terminate the adverse action.

(c) If the accrediting entity described in paragraph (b) of this section is no longer providing accreditation or approval services, the agency or person may petition any accrediting entity with jurisdiction over its application.

(d) If the accrediting entity cancels or refuses to renew an agency's or person's accreditation or approval, and does not terminate the adverse action pursuant to paragraph (b) of this section, the agency or person may reapply for accreditation or approval. Before doing so, the agency or person must request and obtain permission to make a new application from the accrediting entity that cancelled or refused to renew its accreditation or approval or, if such entity is no longer designated as an accrediting entity, from any alternate accrediting entity designated by the Secretary to give such permission. The accrediting entity may grant such permission only if the agency or person demonstrates to the satisfaction of the accrediting entity that the specific deficiencies that led to the cancellation or refusal to renew have been corrected.

(e) If the accrediting entity grants the agency or person permission to reapply, the agency or person may file an application with that accrediting entity in accordance with subpart D of this part.

(f) Nothing in this section shall be construed to prevent an accrediting entity from withdrawing an adverse action if it concludes that the action was based on a mistake of fact or was otherwise in error. Upon taking such action, the accrediting entity will take appropriate steps to notify the Secretary and the Secretary will take appropriate steps to notify the Permanent Bureau of the Hague Conference on Private International Law.

§ 96.79 Administrative or judicial review of adverse action by the accrediting entity.

(a) Except to the extent provided by the procedures in § 96.78, an adverse action by an accrediting entity shall not be subject to administrative review.

(b) Section 202(c)(3) of the IAA (42 U.S.C. 14922(c)(3)) provides for judicial review in Federal court of adverse actions by an accrediting entity, regardless of whether the entity is described in § 96.5(a) or (b). When any petition brought under section 202(c)(3) raises as an issue whether the deficiencies necessitating the adverse action have been corrected, the procedures maintained by the accrediting entity pursuant to § 96.78 must first be exhausted. Adverse actions are only those actions listed in § 96.75. There is no judicial review of an accrediting entity's decision to deny accreditation or approval, including:

(1) A denial of an initial application;

(2) A denial of an application made after cancellation or refusal to renew by the accrediting entity; and

(3) A denial of an application made after cancellation or debarment by the Secretary.

(c) In accordance with section 202(c)(3) of the IAA (42 U.S.C. 14922(c)(3)), an accredited agency or approved person that is the subject of an adverse action by an accrediting entity may petition the United States district court in the judicial district in which the agency is located or the person resides to set aside the adverse action imposed by the accrediting entity. The United States district court shall review the adverse action in accordance with 5 U.S.C. 706. When an accredited agency or approved person petitions a United States district court to review the adverse action of an accrediting entity, the accrediting entity will be considered an agency as defined in 5 U.S.C. 701 for the purpose of judicial review of the adverse action.

§ 96.80 [Reserved]

Subpart L—Oversight of Accredited Agencies and Approved Persons by the Secretary

§ 96.81 Scope.

The provisions in this subpart establish the procedures governing adverse action by the Secretary against accredited agencies and approved persons. Temporary accreditation is governed by the provisions in subpart N of this part. Unless otherwise provided in subpart N of this part, the provisions in this subpart do not apply to temporarily accredited agencies.

§ 96.82 The Secretary's response to actions by the accrediting entity.

(a) There is no administrative review by the Secretary of an accrediting entity's decision to deny accreditation or approval, nor of any decision by an accrediting entity to take an adverse action.

(b) When informed by an accrediting entity that an agency has been accredited or a person has been approved, the Secretary will take appropriate steps to ensure that relevant information about the accredited agency or approved person is provided to the Permanent Bureau of the Hague Conference on Private International Law. When informed by an accrediting entity that it has taken an adverse action that impacts an agency's or person's accreditation or approval status, the Secretary will take appropriate steps to inform the Permanent Bureau of the Hague Conference on Private International Law.

§ 96.83 Suspension or cancellation of accreditation or approval by the Secretary.

(a) The Secretary must suspend or cancel the accreditation or approval granted by an accrediting entity when the Secretary finds, in the Secretary's discretion, that the agency or person is substantially out of compliance with the standards in subpart F of this part and that the accrediting entity has failed or refused, after consultation with the Secretary, to take action.

(b) The Secretary may suspend or cancel the accreditation or approval granted by an accrediting entity if the Secretary finds that such action:

(1) Will protect the interests of children;

(2) Will further U.S. foreign policy or national security interests; or

(3) Will protect the ability of U.S. citizens to adopt children under the Convention.

(c) If the Secretary suspends or cancels the accreditation or approval of an agency or person, the Secretary will take appropriate steps to notify both the accrediting entity and the Permanent Bureau of the Hague Conference on Private International Law.

§ 96.84 Reinstatement of accreditation or approval after suspension or cancellation by the Secretary.

(a) An agency or person may petition the Secretary for relief from the Secretary's suspension or cancellation of its accreditation or approval on the grounds that the deficiencies necessitating the suspension or cancellation have been corrected. If the Secretary is satisfied that the deficiencies that led to the suspension or cancellation have been corrected, the Secretary shall, in the case of a suspension, terminate the suspension or, in the case of a cancellation, notify the agency or person that it may reapply for accreditation or approval to the same accrediting entity that handled its prior application for accreditation or approval. If that accrediting entity is no longer providing accreditation or approval services, the agency or person may reapply to any accrediting entity with jurisdiction over its application. If the Secretary terminates a suspension or permits an agency or person to reapply for accreditation or approval, the Secretary will so notify the appropriate accrediting entity. If the Secretary terminates a suspension, the Secretary will also take appropriate steps to notify the Permanent Bureau of the Hague Conference on Private International Law of the reinstatement.

(b) Nothing in this section shall be construed to prevent the Secretary from withdrawing a cancellation or

suspension if the Secretary concludes that the action was based on a mistake of fact or was otherwise in error. Upon taking such action, the Secretary will take appropriate steps to notify the accrediting entity and the Permanent Bureau of the Hague Conference on Private International Law.

§ 96.85 Temporary and permanent debarment by the Secretary.

(a) The Secretary may temporarily or permanently debar an agency from accreditation or a person from approval on the Secretary's own initiative, at the request of DHS, or at the request of an accrediting entity. A debarment of an accredited agency or approved person will automatically result in the cancellation of accreditation or approval by the Secretary, and the accrediting entity shall deny any pending request for renewal of accreditation or approval.

(b) The Secretary may issue a debarment order only if the Secretary, in the Secretary's discretion, determines that:

(1) There is substantial evidence that the agency or person is out of compliance with the standards in subpart F of this part; and

(2) There has been a pattern of serious, willful, or grossly negligent failures to comply, or other aggravating circumstances indicating that continued accreditation or approval would not be in the best interests of the children and families concerned. For purposes of this paragraph:

(i) ''The children and families concerned'' include any children and any families whose interests have been or may be affected by the agency's or person's actions;

(ii) A failure to comply with § 96.47 (home study requirements) shall constitute a ''serious failure to comply'' unless it is shown by clear and convincing evidence that such noncompliance had neither the purpose nor the effect of determining the outcome of a decision or proceeding by a court or other competent authority in the United States or the child's country of origin; and

(iii) Repeated serious, willful, or grossly negligent failures to comply with § 96.47 (home study requirements) by an agency or person after consultation between the Secretary and the accrediting entity with respect to previous noncompliance by such agency or person shall constitute a pattern of serious, willful, or grossly negligent failures to comply.

§ 96.86 Length of debarment period and reapplication after temporary debarment.

(a) In the case of a temporary debarment order, the order will take effect on the date specified in the order and will specify a date, not earlier than three years later, on or after which the agency or person may petition the Secretary for withdrawal of the temporary debarment. If the Secretary withdraws the temporary debarment, the agency or person may then reapply for accreditation or approval to the same accrediting entity that handled its prior application for accreditation or approval. If that accrediting entity is no longer providing accreditation or approval services, the agency or person may apply to any accrediting entity with jurisdiction over its application.

(b) In the case of a permanent debarment order, the order will take effect on the date specified in the order. The agency or person will not be permitted to apply again to an accrediting entity for accreditation or approval, or to the Secretary for termination of the debarment.

(c) Nothing in this section shall be construed to prevent the Secretary from withdrawing a debarment if the Secretary concludes that the action was based on a mistake of fact or was otherwise in error. Upon taking such action, the Secretary will take appropriate steps to notify the accrediting entity and the Permanent Bureau of the Hague Conference on Private International Law.

§ 96.87 Responsibilities of the accredited agency, approved person, and accrediting entity following suspension, cancellation, or debarment by the Secretary.

If the Secretary suspends or cancels the accreditation or approval of an agency or person, or debars an agency or person, the agency or person must cease to provide adoption services in all Convention cases. In the case of suspension, it must consult with the accrediting entity about whether to transfer its Convention adoption cases and adoption records. In the case of cancellation or debarment, it must execute the plans required by §§ 96.33(e) and 96.42(d) under the oversight of the accrediting entity, and transfer its Convention adoption cases and adoption records to other accredited agencies, approved persons, or a State archive, as appropriate. When the agency or person is unable to transfer such Convention cases or adoption records in accordance with the plans or as otherwise agreed by the accrediting entity, the accrediting entity will so advise the Secretary who, with the assistance of the accrediting entity, will coordinate efforts to identify other accredited agencies or approved persons to assume responsibility for the cases, and to transfer the records to other accredited agencies or approved persons, or to public domestic authorities, as appropriate.

§ 96.88 Review of suspension, cancellation, or debarment by the Secretary.

(a) Except to the extent provided by the procedures in § 96.84, an adverse action by the Secretary shall not be subject to administrative review.

(b) Section 204(d) of the IAA (42 U.S.C. 14924(d)) provides for judicial review of final actions by the Secretary. When any petition brought under section 204(d) raises as an issue whether the deficiencies necessitating a suspension or cancellation of accreditation or approval have been corrected, procedures maintained by the Secretary pursuant to § 96.84(a) must first be exhausted. A suspension or cancellation of accreditation or approval, and a debarment (whether temporary or permanent) by the Secretary are final actions subject to judicial review. Other actions by the Secretary are not final actions and are not subject to judicial review.

(c) In accordance with section 204(d) of the IAA (42 U.S.C. 14924(d)), an agency or person that has been suspended, cancelled, or temporarily or permanently debarred by the Secretary may petition the United States District Court for the District of Columbia, or the United States district court in the judicial district in which the person resides or the agency is located, pursuant to 5 U.S.C. 706, to set aside the action.

§ 96.89 [Reserved]

Subpart M—Dissemination and Reporting of Information by Accrediting Entities

§ 96.90 Scope.

The provisions in this subpart govern the dissemination and reporting of information on accredited agencies and approved persons by accrediting entities. Temporary accreditation is governed by the provisions of subpart N of this part and, as provided for in § 96.110, reports on temporarily accredited agencies must comply with this subpart.

§ 96.91 Dissemination of information to the public about accreditation and approval status.

(a) Once the Convention has entered into force for the United States, the accrediting entity must maintain and make available to the public on a quarterly basis the following information:

(1) The name, address, and contact information for each agency and person it has accredited or approved;

(2) The names of agencies and persons to which it has denied accreditation or approval that have not subsequently been accredited or approved;

(3) The names of agencies and persons that have been subject to withdrawal of temporary accreditation, suspension, cancellation, refusal to renew accreditation or approval, or debarment by the accrediting entity or the Secretary; and

(4) Other information specifically authorized in writing by the accredited agency or approved person to be disclosed to the public.

(b) Once the Convention has entered into force for the United States, each accrediting entity must make the following information available to individual members of the public upon specific request:

(1) Confirmation of whether or not a specific agency or person has a pending application for accreditation or approval, and, if so, the date of the application and whether it is under active consideration or whether a decision on the application has been deferred; and

(2) If an agency or person has been subject to a withdrawal of temporary accreditation, suspension, cancellation, refusal to renew accreditation or approval, or debarment, a brief statement of the reasons for the action.

§ 96.92 Dissemination of information to the public about complaints against accredited agencies and approved persons.

Once the Convention has entered into force for the United States, each accrediting entity must maintain a written record documenting each complaint received and the steps taken in response to it. This information may be disclosed to the public as follows:

(a) The accrediting entity must verify, upon inquiry from a member of the public, whether there have been any substantiated complaints against an accredited agency or approved person, and if so, provide information about the status and nature of any such complaints.

(b) The accrediting entity must have procedures for disclosing information about complaints that are substantiated.

§ 96.93 Reports to the Secretary about accredited agencies and approved persons and their activities.

(a) The accrediting entity must make annual reports to the Secretary on the information it collects from accredited agencies and approved persons pursuant to § 96.43. The accrediting entity must make semi-annual reports to the Secretary that summarize for the preceding six-month period the following information:

(1) The accreditation and approval status of applicants, accredited agencies, and approved persons;

(2) Any instances where it has denied accreditation or approval;

(3) Any adverse actions taken against an accredited agency or approved person and any withdrawals of temporary accreditation;

(4) All substantiated complaints against accredited agencies and approved persons and the impact of such complaints on their accreditation or approval status;

(5) The number, nature, and outcome of complaint investigations carried out by the accrediting entity as well as the shortest, longest, average, and median length of time expended to complete complaint investigations; and

(6) Any discernible patterns in complaints received about specific agencies or persons, as well as any discernible patterns of complaints in the aggregate.

(b) The accrediting entity must report to the Secretary within thirty days of the time it learns that an accredited agency or approved person:

(1) Has ceased to provide adoption services; or

(2) Has transferred its Convention cases and adoption records.

(c) In addition to the reporting requirements contained in § 96.72, an accrediting entity must immediately notify the Secretary in writing:

(1) When it accredits an agency or approves a person;

(2) When it renews the accreditation or approval of an agency or person; or

(3) When it takes an adverse action against an accredited agency or approved person that impacts its accreditation or approval status or withdraws an agency's temporary accreditation.

§ 96.94 [Reserved]

Subpart N—Procedures and Standards Relating to Temporary Accreditation

§ 96.95 Scope.

(a) The provisions in this subpart govern only temporary accreditation. The provisions in subpart F of this part cover full accreditation of agencies and approval of persons.

(b) Agencies that meet the eligibility requirements established in this subpart may apply for temporary accreditation that will run for a one-or two-year period following the Convention's entry into force for the United States. Persons may not be temporarily approved. Temporary accreditation is only available to agencies that apply by the transitional application deadline and who complete the temporary accreditation process by the deadline for initial accreditation or approval in accordance with § 96.19.

§ 96.96 Eligibility requirements for temporary accreditation.

(a) An accrediting entity may not temporarily accredit an agency unless the agency demonstrates to the satisfaction of the accrediting entity that:

(1) It has provided adoption services in fewer than 100 intercountry adoption cases in the calendar year preceding the year in which the transitional application deadline falls. For purposes of this subpart, the number of cases includes all intercountry adoption cases that were handled by, or under the responsibility of, the agency, regardless of whether they involved countries party to the Convention;

(2) It qualifies for nonprofit tax treatment under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or for nonprofit status under the law of any State;

(3) It is properly licensed under State law to provide adoption services in at least one State. It is, and for the last three years prior to the transitional application deadline has been, providing intercountry adoption services;

(4) It has the capacity to maintain and provide to the accrediting entity and the Secretary, within thirty days of request, all of the information relevant to the Secretary's reporting requirements under section 104 of the IAA (42 U.S.C. 14914); and

(5) It has not been involved in any improper conduct related to the provision of intercountry adoption or other services, as evidenced in part by the following:

(i) The agency has maintained its State license without suspension or cancellation for misconduct during the entire period in which it has provided intercountry adoption services;

(ii) The agency has not been subject to a finding of fault or liability in any administrative or judicial action in the three years preceding the transitional application deadline; and

(iii) The agency has not been the subject of any criminal findings of fraud or financial misconduct in the three years preceding the transitional application deadline.

(b) An accrediting entity may not temporarily accredit an agency unless the agency also demonstrates to the

satisfaction of the accrediting entity that it has a comprehensive plan for applying for and achieving full accreditation before the agency's temporary accreditation expires, and is taking steps to execute that plan.

§ 96.97 Application procedures for temporary accreditation.

(a) An agency seeking temporary accreditation must submit an application to an accrediting entity with jurisdiction over its application, with the required fee(s), by the transitional application deadline established pursuant to § 96.19 of this part. Applications for temporary accreditation that are filed after the temporary application deadline will not be considered.

(b) An agency may not seek temporary accreditation and full accreditation at the same time. The agency's application must clearly state whether it is seeking temporary accreditation or full accreditation. An eligible agency's option of applying for temporary accreditation will be deemed to have been waived if the agency also submits a separate application for full accreditation prior to the transitional application deadline. The agency may apply to only one accrediting entity at a time.

(c) The accrediting entity must establish and follow uniform application procedures and must make information about these procedures available to agencies that are considering whether to apply for temporary accreditation. The accrediting entity must evaluate the applicant for temporary accreditation in a timely fashion. The accrediting entity must use its best efforts to provide a reasonable opportunity for an agency that applies for temporary accreditation by the transitional application deadline to complete the temporary accreditation process by the deadline for initial accreditation or approval. If an agency seeks temporary accreditation under this subpart, it will be included on the initial list deposited by the Secretary with the Permanent Bureau of the Hague Conference on Private International Law only if it is granted temporary accreditation by the deadline for initial accreditation or approval established pursuant to § 96.19(a).

§ 96.98 Length of temporary accreditation period.

(a) One-year temporary accreditation. An agency that has provided adoption services in 50–99 intercountry adoptions in the calendar year preceding the year in which the transitional application date falls may apply for a one-year period of temporary accreditation. The one-year period will commence on the date that the Convention enters into force for the United States.

(b) Two-year temporary accreditation. An agency that has provided adoption services in fewer than 50 intercountry adoptions in the calendar year preceding the year in which the transitional application date falls may apply for a two-year period of temporary accreditation. The two-year period will commence on the date that the Convention enters into force for the United States.

§ 96.99 Converting an application for temporary accreditation to an application for full accreditation.

(a) The accrediting entity may, in its discretion, permit an agency that has applied for temporary accreditation to convert its application to an application for full accreditation, subject to submission of any additional required documentation, information, and fee(s). The accrediting entity may grant a request for conversion if the accrediting entity has determined that the applicant is not in fact eligible for temporary accreditation based on the number of adoption cases it has handled; if the agency has concluded that it can complete the full accreditation process sooner than expected; or for any other reason that the accrediting entity deems appropriate.

(b) If an application is converted after the transitional application deadline, it will be treated as an application filed after the transitional application deadline, and the agency may not necessarily be provided an opportunity to complete the accreditation process in time to be included on the initial list of accredited agencies and approved persons that the Secretary will deposit with the Permanent Bureau of the Hague Conference on Private International Law.

§ 96.100 Procedures for evaluating applicants for temporary accreditation.

(a) To evaluate an agency for temporary accreditation, the accrediting entity must:

(1) Review the agency's written application and supporting documentation; and

(2) Verify the information provided by the agency, as appropriate. The accrediting entity may also request additional documentation and information from the agency in support of the application as it deems necessary.

(b) The accrediting entity may also decide, in its discretion, that it must conduct a site visit to determine whether to approve the application for temporary accreditation. The site visit may include interviews with birth parents, adoptive parent(s), prospective adoptive parent(s), and adult adoptee(s) served by the agency, interviews with the agency's employees, and interviews with other individual(s) knowledgeable about its provision of adoption services. It may also include a review of on-site documents. The accrediting entity must, to the extent possible, advise the agency in advance of documents it wishes to review during the site visit. The provisions of §§ 96.25 and 96.26 will govern requests for and use of information.

(c) Before deciding whether to grant temporary accreditation to the agency, the accrediting entity may, in its discretion, advise the agency of any deficiencies that may hinder or prevent its temporary accreditation and defer a decision to allow the agency to correct the deficiencies.

(d) The accrediting entity may only use the criteria contained in § 96.96 when determining whether an agency is eligible for temporary accreditation.

(e) The eligibility criteria contained in § 96.96 and the standards contained in § 96.104 do not eliminate the need for an agency to comply fully with the laws of the jurisdictions in which it operates. An agency must provide adoption services in Convention cases consistent with the laws of any State in which it operates and with the Convention and the IAA.

§ 96.101 Notification of temporary accreditation decisions.

(a) The accrediting entity must notify agencies of its temporary accreditation decisions on the uniform notification date to be established by the Secretary pursuant to § 96.58(a). On that date, the accrediting entity must inform each applicant and the Secretary in writing whether the agency has been granted temporary accreditation. The accrediting entity may not provide any information about its temporary accreditation decisions to any agency or to the public until the uniform notification date. If the Secretary requests information on the interim or final status of an agency prior to the uniform notification date, the accrediting entity must provide such information to the Secretary.

(b) Notwithstanding paragraph (a) of this section, the accrediting entity may, in its discretion, communicate with agencies about the status of their pending applications for temporary accreditation for the sole purpose of affording them an opportunity to correct deficiencies that may hinder their

temporary accreditation. When informed by an accrediting entity that an agency has been temporarily accredited, the Secretary will take appropriate steps to ensure that relevant information about a temporarily accredited agency is provided to the Permanent Bureau of the Hague Conference on Private International Law.

§ 96.102 Review of temporary accreditation decisions.

There is no administrative or judicial review of an accrediting entity's decision to deny temporary accreditation.

§ 96.103 Oversight by accrediting entities.

(a) The accrediting entity must oversee an agency that it has temporarily accredited by monitoring whether the agency is in substantial compliance with the standards contained in § 96.104 and through the process of assessing the agency's application for full accreditation when it is filed. The accrediting entity must also investigate any complaints or other information that becomes available to it about an agency it has temporarily accredited. Complaints against a temporarily accredited agency must be handled in accordance with subpart J of this part. For purposes of subpart J of this part, the temporarily accredited agency will be treated as if it were a fully accredited agency, except that:

(1) The relevant standards will be those contained in § 96.104 rather than those contained in subpart F of this part; and

(2) Enforcement action against the agency will be taken in accordance with § 96.105 and § 96.107 rather than in accordance with subpart K of this part.

(b) The accrediting entity may determine, in its discretion, that it must conduct a site visit to investigate a complaint or other information or otherwise monitor the agency.

(c) The accrediting entity may consider any information that becomes available to it about the compliance of the agency. The provisions of §§ 96.25 and 96.26 govern requests for and use of information.

§ 96.104 Performance standards for temporary accreditation.

The accrediting entity may not maintain an agency's temporary accreditation unless the agency demonstrates to the satisfaction of the accrediting entity that it is in substantial compliance with the following standards:

(a) The agency follows applicable licensing and regulatory requirements in all jurisdictions in which it provides adoption services;

(b) It does not engage in any improper conduct related to the provision of intercountry adoption services, as evidenced in part by the following:

(1) It maintains its State license without suspension or cancellation for misconduct;

(2) It is not subject to a finding of fault or liability in any administrative or judicial action; and

(3) It is not the subject of any criminal findings of fraud or financial misconduct;

(c) It adheres to the standards in § 96.36 prohibiting child buying;

(d) It adheres to the standards for responding to complaints in accordance with § 96.41;

(e) It adheres to the standards on adoption records and information relating to Convention cases in accordance with § 96.42;

(f) It adheres to the standards on providing data to the accrediting entity in accordance with § 96.43;

(g) When acting as the primary provider in a Convention adoption it complies with the standards in §§ 96.44 and 96.45 when using supervised providers in the United States and it complies with the standards in §§ 96.44 and 96.46 when using supervised providers or, to the extent permitted by § 96.14(c), other foreign providers in a Convention country;

(h) When performing or approving a home study in an incoming Convention case, it complies with the standards in § 96.47;

(i) When performing or approving a child background study or obtaining consents in an outgoing Convention case, it complies with the standards in § 96.53;

(j) When performing Convention functions in incoming or outgoing cases, it complies with the standards in § 96.52 or § 96.55;

(k) It has a plan to transfer its Convention cases and adoption records if it ceases to provide or is no longer permitted to provide adoption services in Convention cases. The plan includes provisions for an organized closure and reimbursement to clients of funds paid for services not yet rendered;

(l) It is making continual progress toward completing the process of obtaining full accreditation by the time its temporary accreditation expires; and

(m) It takes all necessary and appropriate measures to perform any tasks in a Convention adoption case that the Secretary identifies are required to comply with the Convention, the IAA, or any regulations implementing the IAA.

§ 96.105 Adverse action against a temporarily accredited agency by an accrediting entity.

(a) If the accrediting entity determines that an agency it has temporarily accredited is substantially out of compliance with the standards in § 96.104, it may, in its discretion, withdraw the agency's temporary accreditation.

(b) The accrediting entity must notify the agency in writing of any decision to withdraw the agency's temporary accreditation. The written notice must identify the deficiencies necessitating the withdrawal. Before withdrawing the agency's temporary accreditation, the accrediting entity may, in its discretion, advise a temporarily accredited agency in writing of any deficiencies in its performance that may warrant withdrawal and provide it with an opportunity to demonstrate that withdrawal would be unwarranted before withdrawal occurs. If the accrediting entity withdraws the agency's temporary accreditation without such prior notice, it must provide a similar opportunity to demonstrate that the withdrawal was unwarranted after the withdrawal occurs, and may reinstate the agency's temporary accreditation based on the information provided.

(c) The provisions of §§ 96.25 and 96.26 govern requests for and use of information.

(d) The accrediting entity must notify the Secretary, in accordance with procedures established in its agreement with the Secretary, when it withdraws or reinstates an agency's temporary accreditation. The accrediting entity must also notify the relevant State licensing authority as provided in the agreement.

§ 96.106 Review of the withdrawal of temporary accreditation by an accrediting entity.

(a) A decision by an accrediting entity to withdraw an agency's temporary accreditation shall not be subject to administrative review.

(b) Withdrawal of temporary accreditation is analogous to cancellation of accreditation and is therefore an adverse action pursuant to § 96.75. In accordance with section 202(c)(3) of the IAA (42 U.S.C. 14922(c)(3)), a temporarily accredited agency that is the subject of an adverse action by an accrediting entity may petition the United States district court in the judicial district in which the agency is located to set aside the adverse action imposed by the accrediting entity. The United States district court shall review the adverse

action in accordance with 5 U.S.C. 706. When a temporarily accredited agency petitions a United States district court to review the adverse action of an accrediting entity, the accrediting entity will be considered an agency as defined in 5 U.S.C. 701 for the purpose of judicial review of the adverse action.

§ 96.107 Adverse action against a temporarily accredited agency by the Secretary.

(a) The Secretary may, in the Secretary's discretion, withdraw an agency's temporary accreditation if the Secretary finds that the agency is substantially out of compliance with the standards in § 96.104 and the accrediting entity has failed or refused, after consultation with the Secretary, to take appropriate enforcement action.

(b) The Secretary may also withdraw an agency's temporary accreditation if the Secretary finds that such action;

(1) Will protect the interests of children;

(2) Will further U.S. foreign policy or national security interests; or

(3) Will protect the ability of U.S. citizens to adopt children under the Convention.

(c) If the Secretary withdraws an agency's temporary accreditation, the Secretary will notify the accrediting entity.

§ 96.108 Review of the withdrawal of temporary accreditation by the Secretary.

(a) There is no administrative review of a decision by the Secretary to withdraw an agency's temporary accreditation.

(b) Section 204(d) of the IAA (42 U.S.C. 14924(d)) provides for judicial review of final actions by the Secretary. Withdrawal of temporary accreditation, which is analogous to cancellation of accreditation, is a final action subject to judicial review.

(c) An agency whose temporary accreditation has been withdrawn by the Secretary may petition the United States District Court for the District of Columbia, or the United States district court in the judicial district in which the agency is located, to set aside the action pursuant to section 204(d) of the IAA (42 U.S.C. 14924(d)).

§ 96.109 Effect of the withdrawal of temporary accreditation by the accrediting entity or the Secretary.

(a) If an agency's temporary accreditation is withdrawn, it must cease to provide adoption services in all Convention cases and must execute the plan required by § 96.104(k) under the oversight of the accrediting entity, and transfer its Convention adoption cases and adoption records to an accredited agency, approved person, or a State archive, as appropriate.

(b) Where the agency is unable to transfer such Convention cases or adoption records in accordance with the plan or as otherwise agreed by the accrediting entity, the accrediting entity will so advise the Secretary who, with the assistance of the accrediting entity, will coordinate efforts to identify other accredited agencies or approved persons to assume responsibility for the cases, and to transfer the records to other accredited agencies or approved persons, or to public domestic authorities, as appropriate.

(c) When an agency's temporary accreditation is withdrawn or reinstated, the Secretary will, where appropriate, take steps to inform the Permanent Bureau of the Hague Conference on Private International Law.

(d) An agency whose temporary accreditation has been withdrawn may continue to seek full accreditation or may withdraw its pending application and apply for full accreditation at a later time. Its application for full accreditation must be made to the same accrediting entity that granted its application for temporary accreditation. If that entity is no longer providing accreditation services, it may apply to any accrediting entity with jurisdiction over its application.

(e) If an agency continues to pursue its application for full accreditation or subsequently applies for full accreditation, the accrediting entity may take the circumstances of the withdrawal of its temporary accreditation into account when evaluating the agency for full accreditation.

§ 96.110 Dissemination and reporting of information about temporarily accredited agencies.

The accrediting entity must disseminate and report information about agencies it has temporarily accredited as if they were fully accredited agencies, in accordance with subpart M of this part.

§ 96.111 Fees charged for temporary accreditation.

(a) Any fees charged by an accrediting entity for temporary accreditation will include a non-refundable fee for temporary accreditation set forth in a schedule of fees approved by the Secretary as provided in § 96.8(a). Such fees may not exceed the costs of temporary accreditation and must include the costs of all activities associated with the temporary accreditation cycle (including, but not limited to, costs for completing the temporary accreditation process, complaint review and investigation, routine oversight and enforcement, and other data collection and reporting activities). The temporary accreditation fee may not include the costs of site visit(s). The schedule of fees may provide, however, that, in the event that a site visit is required to determine whether to approve an application for temporary accreditation, to investigate a complaint or other information, or otherwise to monitor the agency, the accrediting entity may assess additional fees for actual costs incurred for travel and maintenance of evaluators and for any additional administrative costs to the accrediting entity. In such a case, the accrediting entity may estimate the additional fees and may require that the estimated amount be paid in advance, subject to a refund of any overcharge. Temporary accreditation may be denied or withdrawn if the estimated fees are not paid.

(b) An accrediting entity must make its schedule of fees available to the public, including prospective applicants for temporary accreditation, upon request. At the time of application, the accrediting entity must specify the fees to be charged in a contract between the parties and must provide notice to the applicant that no portion of the fee will be refunded if the applicant fails to become temporarily accredited.

Dated: January 13, 2006.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 06–1067 Filed 2–14–06; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

22 CFR Parts 97 and 98

[Public Notice 5297]

RIN 1400–AB69

Intercountry Adoption—Preservation of Convention Records

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule finalizes the proposed rule published on September 15, 2003 to implement the records preservation requirements of the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Convention) and the Intercountry Adoption Act of 2000 (the IAA). The IAA requires that the Department of State (the Department) issue rules to govern the

preservation of Convention records held by the Department and the Department of Homeland Security (DHS). This final rule is the same as the proposed rule, except for non-substantive technical corrections. It requires the Department and DHS to maintain Convention records for 75 years and defines the term Convention record.

DATES: This rule is effective March 17, 2006. Information about the date the Convention will enter into force is indicated in the text of the final rule.

FOR FURTHER INFORMATION CONTACT: For further information, contact Corrin Ferber at 202–736–9172 or Anna Mary Coburn at 202–736–9081. Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

The Department published a proposed rule to be codified as part 98 of title 22 of the CFR addressing the Department's and DHS's preservation of Convention records under the Convention and the IAA in the **Federal Register** on September 15, 2003 (68 FR 54119). A companion proposed rule, to be codified as part 96 of title 22 of the CFR, was published in the **Federal Register** on the same day (68 FR 54064). The companion proposed rule covered the accreditation and approval of agencies and persons under the Convention and the IAA. We received public comments regarding both proposed part 96 and proposed part 98. This notice discusses comments received expressing concerns about the preservation of Convention records requirements of part 98 of title 22 of the CFR. Discussion of public comments on records issues not directly related to preservation of Convention records, such as preservation of and access to adoption records, may be found in the **SUPPLEMENTARY INFORMATION** published with the final rule for part 96 of title 22 of the CFR.

This final rule fulfills the Department's responsibility to promulgate regulations addressing the preservation of Convention records. Section 401(a) of the IAA requires that the Department issue regulations that establish procedures and requirements for the preservation of Convention records, implementing in part the Convention's Article 30(1) requirement that each Convention country ensure preservation of information concerning any child whose adoption is subject to the Convention. The proposed rule for part 98 provided for a 75-year preservation period and defined Convention record. The notice of the proposed rule contained a detailed Preamble giving the statutory basis for issuing the rule, and reasons for the Department's decisions in the rule.

The Department is adopting the proposed rule as final, with no changes in response to public comment. The Department did make several technical changes to § 98.2, to avoid redundancy. These changes have no substantive effect on the rule. The final rule defines Convention record and adopts the same definition of Convention that the Department is adopting today in § 96.2 of part 96 of title 22 of the Code of Federal Regulations (CFR), as well as other terms from part 96 such as the Secretary, DHS, Case Registry, Convention country, adoption records, agency, person, and public body. It also requires the Department and DHS to preserve Convention records for 75 years. This final rule also reserves a new part 97 of title 22 of the CFR to cover intercountry adoption procedures under the Convention.

This rule does not address or change otherwise applicable Federal law governing access to Convention records. Access to Convention records retained by the Department or DHS will be controlled by Federal law governing access to records held by Federal agencies, particularly by the Freedom of Information Act (5 U.S.C. 522 (1966)) and the Privacy Act (5 U.S.C. 552(a) (1974)).

The final rule also does not create a new Federal rule governing access to adoption records—i.e., records held by entities outside the Federal Government. The term adoption record is defined in § 96.2 of part 96 of title 22 of the CFR to include records generated, received, or in the custody of agencies and persons or State public entities. State law will continue to govern access to adoption records held by agencies, persons, or public entities including State courts as provided for by section 401(c) of the IAA.

Discussion of Comments and Major Reasons for Retaining Proposed Rule as the Final Rule

Section 98.1—Definition of Convention Record

The Term ''Convention Record''

We have not changed the definition of Convention record from that provided in the proposed rule. The final rule continues to follow the IAA definition of Convention record by including only records pertaining to adoptions under the Convention that are generated, received, or in the custody of two Federal agencies—the Department or DHS. The final rule also continues to clarify that the definition of Convention record includes not only records pertaining to Convention adoptions in which a child is immigrating to or from the United States, but also Convention adoptions involving two other countries party to the Convention in which the United States performs some Central Authority function. For example, there could be an instance where adoptive parents from Canada gain custody of a child from Lithuania (two Convention countries), and move to the United States during the post-placement period, during which a disruption occurs. In such a case, the Department, as the U.S. Central Authority, may become involved in consultations with Lithuania pursuant to Convention Article 21. Any resulting records would be treated as Convention records.

Comment: One commenter thinks that the responsibility for the preservation of all records relating to Convention adoptions is best granted to the Department and DHS because records could be lost when an agency or person closes or experiences a natural disaster such as a flood or fire. It suggests placing the responsibility for preserving all records related to Convention adoptions with a government office. Another commenter expresses concern that DHS would be responsible for retaining and maintaining Convention records.

Response: There are two kinds of records: Convention records and adoption records. Adoption records are defined, in the final rule for part 96 of title 22 of the CFR, generally as records in the physical possession of agencies, persons, and the States. Convention records are records in the physical possession of two Federal Government agencies—the Department and DHS. The IAA provides no statutory authority for the Department to require custodians of adoption records to transfer such records to the Federal government, nor does it provide any basis for the Department to store and preserve such non-Federal records. In fact, the Department believes such an approach would be inconsistent with § 401(c) of the IAA.

With respect to the question of whether all Convention records should be consolidated in the custody of the Department (or DHS), that is an internal agency management issue beyond the scope of this rule. This rule addresses only the length of time for which Convention records will be held, not how the Department and DHS will store Convention records. Any future decision by the Department and DHS to

consolidate record holdings is a question of agency management, to be addressed in negotiations between the two agencies. Thus, the Department is not modifying this section of the rule requiring both DHS and the Department to preserve their records involving a Convention adoption.

Comment: One commenter states that no definition of Convention record has been provided.

Response: There is a detailed definition of Convention record in § 98.1(b).

Preservation Requirement of 75 Years

After reviewing the public comments and consultations with DHS, the rule keeps a minimum period of 75 years for the preservation of Convention records. While no change was made in response to public comment, non-substantive technical changes were made to § 98.2 to delete redundancies.

Section 98.2—Preservation of Convention Records

Comment: Commenters expressed concerns about the record preservation time period. A commenter suggests changing the retention period from 75 years to 99 years. One adoptive parent suggested 100 years; other commenters agree with the 75-year time period; other commenters want Convention records to be retained permanently. Commenters wanted the preservation time period to be extended from 75 years to 100 years on the grounds that individuals are living longer than before and may seek out information available in a Convention record after the 75-year time period has expired. Several commenters also asked that the preservation time period be extended so that the information will be available to the children and future generations of the adoptee.

Response: The Department has retained the 75-year preservation period for Convention records. This time period is sufficient to preserve Convention records for a period comparable to current life expectancies, while also ensuring that the costs and burden of maintaining records are not incurred unnecessarily by retaining Convention records beyond their likely usefulness. It is also consistent with the current record preservation period for vital records held by the Department and DHS that are similar to Convention records. While the Department appreciates the desire of some members of the public to preserve Convention records permanently so that they will be available to the children of adoptees, preserving Convention records permanently would create too great a recordkeeping burden. For further explanation of the 75-year preservation requirement, including information on when the 75-year time period begins to run, please see the Preamble to the Proposed Rule (68 FR 54119).

Comment: One parent suggests that the Department require countries of origin to retain records of all Convention adoptions. Other commenters suggest establishing a penalty to prohibit anyone but the adoptee, adoptive parents, or birthparents from accessing the information in the country of origin.

Response: The Department is making no change in response to these comments, which go beyond the scope of the proposed rule. In any event, the Department has no authority to force countries of origin to retain Convention records or adoption records or to impose penalties on a country of origin's Central Authorities or other public authorities if such country provides access to records to others besides adoptees, birthparent(s), or adoptive parent(s). The country of origin's laws will govern access to and preservation of records in the custody of the country of origin's Central Authority or other public authorities.

Comment: One parent believes adoption records should be open to all adult adoptees. A commenter supports opening adoption information to all adult adoptees or to the birth parents if the adoptee is a minor. Another commenter recommends the creation of an ombudsman office, which would provide information as needed to adoptive parent(s), birthparent(s), and adoptees.

Response: The Department is making no change to the proposed rule because part 98 does not regulate access to adoption records or Convention records. It has one narrow focuš≤uto establish the length of time the Department and DHS must preserve Convention records (records in custody of the Department or DHS). Section 401(c) of the IAA specifically provides that applicable State law will continue to determine whether adoption records are open to adoptees, birth parent(s), or adoptive parent(s). Similarly, it is outside the scope of this regulation to establish an ombudsman office to handle inquiries about access to records in the possession of entities other than the Department or DHS.

Comment: A commenter suggests that Convention records be held by a Federal entity, such as the National Archives. The commenter believes Convention records should be considered Federal records and made accessible through FOIA.

Response: If a record is a Convention record (not an adoption record), it is by definition a record preserved by the Department or DHS, both of which are Federal entities. Pursuant to the IAA, access to Convention records will be governed by applicable Federal law, including the FOIA and the Privacy Act. The question of where the Department and DHS will physically store Convention records is an operational issue that is not within the scope of this regulation. We have not addressed where Convention records will be physically held in this rule because we want to maintain the flexibility to take advantage of any advances in the rapidly changing field of information storage technology.

Regulatory Review

Regulatory Flexibility Act/Executive Order 13272: Small Business

The Department of State has reviewed this regulation, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–612, and, pursuant to 5 U.S.C. 605(b), certifies that it will not have a significant economic impact on a substantial number of small entities and that Executive Order 13272 is inapplicable.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804 for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121. The rule will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

The Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Public Law. 104–4; 109 Stat. 48; 2 U.S.C. 1532, generally requires agencies to prepare a statement, including cost-benefit and other analyses, before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector. Section 4 of UFMA, 2 U.S.C. 1503, excludes legislation necessary for implementation of treaty obligations. The IAA falls within this exclusion

because it is the implementing legislation for the Convention. In any event, this rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year. Moreover, because this rule will not significantly or uniquely affect small governments, section 203 of the UFMA, 2 U.S.C. 1533, does not require preparation of a small government agency plan in connection with it.

Executive Order 13132: Federalism

A rule has federalism implications under Executive Order 13132 if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This regulation will not have such effects, and therefore does not have sufficient federalism implications to require consultations or to warrant the preparation of a federalism summary impact statement under section 6 of Executive Order 13132.

Executive Order 12866: Regulatory Review

Under section 3(f) of Executive Order 12866, regulations that meet the definition of ''significant regulatory action'' generally must be submitted to OMB for review. Section 3 of Executive Order 12866 exempts from this requirement ''rules that pertain to a military or foreign affairs function of the United States, other than procurement regulations and regulations involving the import or export of non-defense articles and services.'' This rule, through which the Department provides for implementation of the Convention, directly pertains to foreign affairs functions of the United States. Although the Department does not consider this rule to be a ''significant regulatory action'' within the meaning of the Executive Order 12866, the Department has consulted with DHS during the formulation of the rule. The rule was sent for review to OMB.

Executive Order 12988: Civil Justice Reform

The Department has reviewed this final rule in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden. The Department has made every reasonable effort to ensure compliance with the requirements in Executive Order 12988.

The Paperwork Reduction Act (PRA) of 1995

Under the PRA, 42 U.S.C. 3501 et seq., agencies are generally required to submit to OMB for review and approval collection of information requirements imposed on ''persons'' as defined in the PRA. These regulations impose information retention requirements only on the Department of State and DHS and thus the requirements of the PRA do not apply.

List of Subjects in 22 CFR Part 98

Adoption and foster care, International agreements, Reporting and recordkeeping requirements.

■ Accordingly, the Department amends title 22 of the CFR, chapter I, subchapter J, as follows:

PART 97—INTERCOUNTRY ADOPTION—ISSUANCE OF HAGUE CONVENTION CERTIFICATES AND DECLARATIONS IN CONVENTION ADOPTION CASES [RESERVED]

■ 1. Part 97 is added and reserved to read as set forth above.

■ 2. Part 98 is added to read as follows:

PART 98—INTERCOUNTRY ADOPTION—CONVENTION RECORD PRESERVATION

Sec.

Authority: Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (done at The Hague, May 29, 1993), S. Treaty Doc. 105–51 (1998); 1870 U.N.T.S. 167 (Reg. No. 31922 (1993)); Intercountry Adoption Act of 2000, 42 U.S.C. 14901–14954.

§ 98.1 Definitions.

As used in this part:

(a) Convention means the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, done at The Hague on May 29, 1993.

(b) Convention record means any item, collection, or grouping of information contained in an electronic or physical document, an electronic collection of data (including the information contained in the Case Registry), a photograph, an audio or video tape, or any other information storage medium of any type whatever that contains information about a specific past, current, or prospective adoption covered by the Convention (regardless of whether the adoption was made final) that has been generated or received by the Secretary or the Department of Homeland Security (DHS). Convention record includes a record, generated or received by the Secretary or DHS, about a specific adoption case involving two Convention countries other than the United States in connection with which the Secretary or DHS performs a Central Authority function.

(c) Such other terms as are defined in 22 CFR 96.2 shall have the meaning given to them therein.

§ 98.2 Preservation of Convention records.

Once the Convention has entered into force for the United States, the Secretary and DHS will preserve, or require the preservation of, Convention records for a period of not less than 75 years. For Convention records involving a child who is immigrating to the United States and Convention records involving a child who is emigrating from the United States, the 75-year period shall start on the date that the Secretary or DHS generates or receives the first Convention record related to the adoption of the child. For an intercountry adoption or placement for adoption involving two Convention countries other than the United States, the 75-year period shall start on the date that the Secretary or DHS generates or receives the first Convention record in connection with the performance of a Central Authority function.

Dated: January 13, 2006.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 06–1068 Filed 2–14–06; 8:45 am]

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Federal Register

Wednesday,
February 15, 2006

Part III

Department of Education

National Institute on Disability and Rehabilitation Research—Notice of Final Long-Range Plan for Fiscal Years 2005–2009

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research—Notice of Final Long-Range Plan for Fiscal Years 2005–2009

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of Final Long-Range Plan for Fiscal Years (FY) 2005–2009.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services (OSERS) publishes the Final Long-Range Plan (Final Plan) for the National Institute on Disability and Rehabilitation Research (NIDRR) for FY 2005 through 2009. As required by the Rehabilitation Act of 1973, as amended (Act), the Assistant Secretary takes this action to outline priorities for rehabilitation research, demonstration projects, training, and related activities, and to explain the basis for these priorities.

DATES: *Effective Date:* The Final Plan is effective March 17, 2006.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20204–2700. Telephone: (202) 245–7462.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339 between 8 a.m. and 4 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section.

SUPPLEMENTARY INFORMATION:

Background

The Final Plan presents a five-year research agenda anchored in legislative mandate, consumer goals, and scientific initiatives. The Final Plan has several distinct purposes:

(1) To set broad general directions that will guide NIDRR's policies and use of resources.

(2) To establish objectives for research and related activities from which annual research priorities can be formulated.

(3) To describe a system for operationalizing the Final Plan in terms of annual priorities, evaluation of the implementation of the Final Plan, and updates of the Final Plan as necessary.

(4) To direct new emphasis to the management and administration of the research endeavor.

The Final Plan was developed with the guidance of a distinguished group of NIDRR constituents—individuals with disabilities and their family members and advocates, service providers, researchers, educators, administrators, and policymakers, including the Commissioner of the Rehabilitation Services Administration, members of the National Council on Disability, and representatives from the U.S. Department of Health and Human Services.

The authority for the Secretary to prepare the Final Plan is contained in section 202(h) of the Act (29 U.S.C. 762(h)). NIDRR published a Notice of Proposed Long-Range Plan for FY 2005–2009 (Proposed Plan) on July 27, 2005 (70 FR 43522). The Act requires that NIDRR consider all public comments received regarding the Proposed Plan and then transmit the Final Plan to Congress.

The Final Plan is published as an attachment to this notice.

Public Comments

In response to the invitation in the Notice of Proposed Long-Range Plan for FY 2005–2009, NIDRR received 45 comments regarding the Proposed Plan. The majority of the comments were positive and supportive of the Proposed Plan. Comments that suggested changes in the Proposed Plan generally fell into one of two categories. One small group of comments suggested changes to the Proposed Plan that NIDRR does not have the authority to make (*e.g.*, requests to increase funding for NIDRR) or that would result in NIDRR not complying with the Act (*e.g.*, changes to the mandatory set-aside requirements for minority institutions). NIDRR is unable to make these changes.

Another group of comments requested that NIDRR include more references to specific target populations, disability groups, and therapeutic modalities in the Proposed Plan. NIDRR believes that it is unnecessary to make any changes to the Proposed Plan based on these comments because the long-range plan is a strategic plan designed to provide a broad framework for funding research that is consistent with NIDRR's mission, including research that both addresses specific target populations (as defined in 34 CFR § 350.5) and relates to the outcomes described in NIDRR's Logic Model, as presented in the Proposed Plan.

While the Proposed Plan is organized along domains of research (*i.e.*, employment, health and function, technology for access and function, participation and community living, and disability demographics) for the sake of manageability, it also makes clear that disability is a holistic phenomenon that involves many overlapping and cross-domain issues. For example, through the Field-Initiated (FI) Program, which covers all aspects of NIDRR's research domains and addresses all disability populations with a wide range of research approaches, NIDRR encourages applications that address overlapping and cross-domain issues for any relevant populations. In addition, with respect to those programs for which NIDRR establishes annual priorities—Rehabilitation Research and Training Centers (RRTCs), Rehabilitation Engineering Research Centers (RERCs), and Disability and Rehabilitation Research Projects (DRRPs)—NIDRR may require applicants to focus on one or more target populations or issues that cut across domains. Increasingly, NIDRR is asking for cross-disability and multidisciplinary research. For example, NIDRR could establish a research priority in the employment domain that requires applicants to focus on persons with intellectual disabilities and issues related to technology. Given the structure of NIDRR's research programs, therefore, NIDRR believes that the concerns of commenters who seek more attention on specific target populations, disability groups, or therapeutic modalities can be accommodated within the framework of the Proposed Plan.

Changes to Proposed Plan

Following publication of the Proposed Plan, NIDRR realized that it inadvertently had failed to discuss in the Proposed Plan the Disability and Business Technical Assistance Centers (DBTACs) that it supports under its DRRP program and its work on coordinating the Federal response to emergency preparedness and disability based on Executive Order 13347, Individuals with Disabilities in Emergency Preparedness. Commenters also noted the absence of this information in the Proposed Plan. Accordingly, NIDRR has made changes to the Proposed Plan as follows:

DBTAC

The Proposed Plan did not include references to NIDRR's ongoing DBTAC program, which is NIDRR's program for facilitating implementation of the Americans with Disabilities Act of 1990 (ADA). The following language, therefore, has been added as the third paragraph under the heading *Future Agenda* in the section entitled *Knowledge Translation:*

''Knowledge Translation includes the provision of information, technical assistance, and training in areas related to disability policy. The Act assigns to NIDRR the responsibility for those activities in relation to the ADA. NIDRR intends to implement those activities through a national network of regionally-based centers that will provide assistance to disability organizations, individuals with disabilities, businesses, public agencies, and the general public, and that will contribute to research on topics covered under the ADA.''

Individuals With Disabilities in Emergency Preparedness

In recognition of NIDRR's ongoing work in the area of emergency preparedness for individuals with disabilities, NIDRR has made the following changes to the Proposed Plan:

Under the heading *National Policy Context for NIDRR Research* in *Part A: Introduction and Background Introduction,* we have revised the second sentence to reference Executive Order 13347, Individuals with Disabilities in Emergency Preparedness, such that the sentence now reads as follows: ''These include the U.S. Supreme Court's 1999 decision in *Olmstead* v. *L.C.* (527 U.S. 581), the President's New Freedom Initiative (NFI), the report of the President's New Freedom Commission On Mental Health, and Executive Order 13347, Individuals with Disabilities in Emergency Preparedness.'' In addition, at the end of the *National Policy Context for NIDRR Research* section, NIDRR has added the following language:

''On July 26, 2004, President George W. Bush issued Executive Order 13347, 'Individuals with Disabilities in Emergency Preparedness'. This Order establishes a policy that the Federal government appropriately support the safety and security of individuals with disabilities in situations involving both natural and man-made disasters. The Order directs Executive departments and other Federal agencies to include individuals with disabilities in emergency preparedness planning. Also included in the Order was the establishment of an Interagency Coordinating Council (ICC) to coordinate the Federal response to emergency preparedness and disability. The ICC established a research committee, which was co-chaired by NIDRR staff. The ICC concluded, and reported to the President, that it is critical to transition from suggestions and ideas to empirically-based research that provides evidence of what works.''

In addition to the few changes identified in the preceding paragraphs, the Final Plan reflects a number of additional non-substantive and clarifying revisions.

NIDRR appreciates the many thoughtful comments it received regarding the Proposed Plan, and will continue to consider them in updates to the Final Plan and in future priorities.

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Dated: February 7, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

National Institute on Disability and Rehabilitation Research: Long-Range Plan for 2005–2009

Preface

The introductory section of the National Institute on Disability and Rehabilitation Research (NIDRR) Long-Range Plan 2005–009 (Plan) provides basic background about NIDRR. This includes its mission, its administrative location, the legislative and administrative environments in which NIDRR operates, intended beneficiaries of NIDRR research, conceptual overview of the Plan, management and evaluation principles, general highlights of 25 years of NIDRR research, and the structure of the Plan. The first section of the Plan also includes a chapter that defines and describes NIDRR's target population, providing some data on population characteristics. The second section of the Plan presents NIDRR's Logic Model and research domains, and operational strategies to implement the Plan and enhance the accountability and responsiveness of NIDRR. The third section of the Plan delineates each domain of NIDRR research and related activities and the strategies that will be employed to address NIDRR's mission.

Part A: Introduction and Background

I. Introduction

The mission of the National Institute on Disability and Rehabilitation Research (NIDRR or the Institute) is to generate new knowledge and promote its effective use to improve the abilities of people with disabilities to perform activities of their choice in the community, and also to expand society's capacity to provide full opportunities and accommodations for its citizens with disabilities.

The timely convergence of technological breakthroughs and empowerment of people with disabilities has resulted in increased demand for the products of disability and rehabilitation research. These include not only technological devices but also new knowledge about interventions and policies that will further the mission of NIDRR to advance all aspects of life for people with disabilities.

Organizational Context

NIDRR is located within the Office of Special Education and Rehabilitative Services (OSERS) at the U.S. Department of Education (Department). OSERS has two other components: The Rehabilitation Services Administration (RSA), which administers the State-Federal Vocational Rehabilitation Program, and the Office of Special Education Programs (OSEP), which oversees the implementation of the Individuals with Disabilities Education Act, as amended (IDEA). NIDRR, therefore, is ideally situated to facilitate the transfer of knowledge to consumers, practitioners, and administrators in vocational rehabilitation and special education. NIDRR also has developed extensive linkages to the broader disability and rehabilitation research community through its leadership work chairing the Interagency Committee on Disability Research (ICDR) and through development of significant partnerships with many Federal agencies, research institutions, and consumer organizations. NIDRR values and encourages the collaborative and synergistic nature of its many partnerships, as significant advancements in disability knowledge are achieved through the efforts of many researchers and others over time.

Statutory Mandates

The 1978 amendments to the Rehabilitation Act of 1973, as amended, (the Act) created NIDRR [1] in recognition of both the opportunities for scientific and technological advancements to

[1] Established as the National Institute on Handicapped Research (NIHR) in the 1978 amendments, the Institute's name was changed to the National Institute on Disability and Rehabilitation Research (NIDRR) by the 1986 amendments to the Rehabilitation Act of 1973, as amended.

improve the lives of people with disabilities and the need for a comprehensive and coordinated approach to research, development, demonstration, and information dissemination and training. These amendments charged NIDRR with providing a comprehensive and coordinated program of research and related activities designed to maximize the inclusion and social integration, health and function, employment and independent living of individuals of all ages with disabilities.

In addition to research and development (R&D), the Act authorizes widespread dissemination of research-generated knowledge to rehabilitation service providers, people with disabilities and their families, researchers, and others; promotion of technology transfer; leadership of an Interagency Committee to coordinate Federal disability and rehabilitation research; advanced training in disability and rehabilitation research; and increased opportunities for minority institutions and researchers with disabilities or from minority groups.

To guide rehabilitation research, the Act requires publication of the proposed Plan in the **Federal Register**, public comment on the Plan, and subsequent production of a final Plan. The Act specifies that in developing and implementing the Plan, NIDRR should: outline priorities for NIDRR's activities and provide the basis for such priorities; specify appropriate goals and timetables for covered activities to be conducted under sections 202 and 204 of title II of the Act; develop the Plan in consultation with the Commissioner of RSA, the Commissioner of the Administration on Developmental Disabilities, the National Council on Disability (NCD), and the ICDR; and provide full consideration to the input of people with disabilities and their family members, organizations representing people with disabilities, researchers, service providers, and other appropriate entities. The Plan also must provide for widespread dissemination of the results of funded activities, in accessible formats, to rehabilitation practitioners and individuals with disabilities and their families, including those who are members of minority groups or underserved populations.

This final Plan was developed by NIDRR with extensive input from an expert panel of researchers, service providers, and people with disabilities. Appendix 1 of this Plan contains a list of the expert panel members. In addition, NIDRR actively solicited comments through a Web site and through six national videoconferences. NIDRR also consulted with the ICDR, the NCD, and other Federal partners.

National Policy Context for NIDRR Research

In recent years, several major policy directives have influenced activities and initiatives in disability and rehabilitation research, including implementation of the 1999–2003 NIDRR Long-Range Plan and development of the proposed Plan. These include the U.S. Supreme Court's 1999 decision in *Olmstead* v. *L.C.* (527 U.S. 581), the President's New Freedom Initiative (NFI), the report of the President's New Freedom Commission On Mental Health, and Executive Order 13347, Individuals with Disabilities in Emergency Preparedness. The Americans with Disabilities Act of 1990 (ADA), now in existence for more than a decade, has continued to provide a strong framework for all disability-related activities.

Because maximum community participation for persons with disabilities is the ultimate objective of NIDRR research, the important directives in the *Olmstead* decision resonate with and inform NIDRR's agenda. The *Olmstead* decision stated that Title II of the ADA requires public agencies that provide services to people with disabilities do so in the most integrated settings appropriate to their needs. Moreover, State agencies that provide housing and services must make plans to move individuals from institutions to community environments and to divert others from institutionalization when appropriate. The *Olmstead* decision allows State agencies to take into consideration limited available funds, but does require that they show progress through planning for the implementation of change. Full implementation of this decision eventually will have far-reaching consequences for people with disabilities and the service systems they use.

The *Olmstead* decision affects disability and rehabilitation research as it highlights the need for new, validated strategies; and supports programs, interventions, guidelines, and policies to make living in the community successful for deinstitutionalized individuals or those diverted from potential institutionalization. Individual States are serving as de facto laboratories for research into social policy implementation, and generate a need and an opportunity for the evaluation of best practices. NIDRR will continue its focus on research that addresses effective use of information for people with disabilities and access to appropriate accommodations in society; both are essential components of the Institute's research agenda.

The NFI was announced by President George W. Bush on February 1, 2001, to further the full participation of people with disabilities in all areas of society by increasing access to assistive and universally designed technologies, by expanding educational and employment opportunities, and by promoting full access to community life. Several provisions of the NFI have had a direct impact on NIDRR activities. The NFI included a proposal to increase funding for NIDRR's Rehabilitation Engineering Research Centers (RERCs). Substantial funding was earmarked for the ICDR, which is chaired and staffed by NIDRR, in order to increase coordination of Federal research efforts related to technology and disability. Other aspects of the NFI, such as increased preparedness and more opportunities for employment, telework, universal design, access to assistive technology, increased homeownership, and access to mental health services, also influenced NIDRR's activities and research during much of the preceding four years.

The President's New Freedom Commission on Mental Health (Commission), established through Executive Order 13263 on April 29, 2002, examined the mental healthcare system in the Nation and issued recommendations for change. In July 2003, the Commission issued its final report, ''Achieving the Promise: Transforming Mental Health Care in America.'' The report identified barriers to care within the mental health system and provided examples of community-based care models that have worked successfully to coordinate and provide treatment services. The Commission concluded that the mental health service delivery system in the United States is fragmented and should be substantively transformed. Goals for the transformed system include ensuring that: (1) Americans understand that mental health is essential to overall health; (2) Mental healthcare is consumer and family-driven; (3) Disparities in mental health services are eliminated; (4) Early mental health screening, assessment, and referral to services are common practice; (5) Excellent mental health services are delivered and research is accelerated; and (6) Technology is used to access mental healthcare and information.

The realization of these goals will require the development and transfer of new knowledge about barriers to recovery and community integration, effective treatment interventions and

supports, best practices in services delivery and increasing access to care, technology to support living independently in the community, and accommodations to promote employment. The Commission's final report contains substantial implications for NIDRR's research agenda, as well as those of its Federal partner agencies.

On July 26, 2004, President George W. Bush issued Executive Order 13347, ''Individuals with Disabilities in Emergency Preparedness.'' This Order establishes a policy that the Federal government appropriately support the safety and security of individuals with disabilities in situations involving both natural and man-made disasters. The Order directs Executive departments and other Federal agencies to include individuals with disabilities in emergency preparedness planning. Also included in the Order was the establishment of an Interagency Coordinating Council (ICC) to coordinate the Federal response to emergency preparedness and disability. The ICC established a research committee, which was co-chaired by NIDRR staff. The ICC concluded, and reported to the President, that it is critical to transition from suggestions and ideas to empirically-based research that provides evidence of what works.

Overview of Long-Range Plan Concepts

The proposed Plan builds on the work of the 1999–2003 Long-Range Plan, while responding to new developments in the disability and rehabilitation research field and in government. Both plans stress the importance of NIDRR's significant role as a research institute in the public interest, carrying out scientific research to meet the diverse needs of people with disabilities.

The contextual paradigm of disability and rehabilitation research will continue to frame the NIDRR research agenda. This paradigm overcomes the limitations imposed by a medical model of disability. The new paradigm of disability maintains that ''disability is a product of the interaction between characteristics of the individual (*e.g.*, conditions or impairments, functional status, or personal and social qualities) and the characteristics of the natural, built, cultural, and social environments.'' (NIDRR Long-Range Plan 1999–2003).

The contextual paradigm of disability was explicated in the 1999–2003 NIDRR Long-Range Plan and significantly influenced the design of NIDRR research during the past five years. The contextual paradigm of disability helps to focus NIDRR research on new research issues; new approaches for defining, measuring, counting, and categorizing disability; and new methods for conducting and managing research. Definitions and enumeration of disability are addressed in the subsequent chapter on the characteristics of the target population and in the demographics research chapter. New approaches to measurement issues and research methods will be addressed in each of the chapters on research domains (*e.g.*, participation and community living, health and function, technology for access and function, employment, and demographics), as will new research methods. New research issues will be discussed in the individual chapters on research domains.

The Plan continues the important research areas of universal design and the emerging universe of disability. The new Plan further recognizes the importance of interdependence, not only in its continued emphasis on personal assistance services, but also on supports for family and other informal caregivers, direct care workers, and paraprofessionals in facilitating community living and participation in the community.

The Plan expands NIDRR's emphasis on the major research ''domains'' of employment, participation and community life, health and function, and technology for access and function. In these areas, the Plan continues to emphasize areas of employment incentives and accommodations, access to healthcare, and the preference for supports rather than services as the model for facilitating the community integration of people with disabilities. The previously termed *domain of independent living and community integration* in the 1999–2003 Long-Range Plan has been renamed *participation and community living* to better capture the broad goal of increased participation, which is intrinsic to the NIDRR mission. Additionally, the area of *disability demographics* has been elevated to a major domain. This change recognizes and reinforces the importance of improved disability data for policy, design of services, and future research initiatives.

The Plan also embraces the concept of disability as a holistic phenomenon by extending this concept into the research field. This is achieved by emphasizing interactions between two or more domains, thus indicating and stressing the important interrelationships among the research domains throughout the Plan.

Accountability, Management, and Evaluation of Research

The Plan introduces major changes in accountability, management, and evaluation of the research portfolio, some of which reflect new standards of accountability for NIDRR as an entity, while others relate to the performance of grantees.

In 1993, Congress passed the Government Performance and Results Act (GPRA), intended to improve accountability of Federal programs through strategic planning and performance assessment. GPRA requires Federal agencies to develop strategic plans for all programs, identifying performance goals and the indicators that would be used to measure progress. In 2002, the President's Management Agenda was announced, emphasizing the use of objective criteria to assess program results for budgeting purposes. The Office of Management and Budget (OMB) developed the Program Assessment Rating Tool (PART) to assess each program's performance. Government-wide policy shifts have resulted in changes in NIDRR management procedures to emphasize standards for assessing its work and that of its grantees. NIDRR has developed its response to the PART document by using a logic model, as presented in the next part of the Plan.

While NIDRR will continue to emphasize the same or similar research areas as those delineated in the 1999–2003 Long-Range Plan (*i.e.*, employment, health and function, technology for access and function, participation and community living, and disability demographics, which are termed *domains* in this Plan), there will be new emphases on stages of knowledge development. These stages relate to the types of objectives and end products that grantees are expected to pursue. These stages include: (1) Discoveries; (2) theories, measures, and methods; and (3) interventions, products or devices, and environmental adaptations.

In program reviews and other evaluations, NIDRR has found that disability and rehabilitation research often lacks validated theories and measures. The degree of deficit varies from one domain to another, and within domains, in relation to certain disability types or other target populations. Equally important is the tendency to sometimes reinvent data collection instruments for each individual study, rather than create a more robust knowledge base by using instruments that already are validated. Validated measurement tools are critical to

evaluating research outcomes, and for determining which research findings are appropriate for dissemination to various constituents. Research projects at the second stage of knowledge development will develop and test the validity of theories, measures, and methods as applied to disability research.

The focus on research stages of knowledge development will enable NIDRR to set more measurable goals and to assess the extent to which grantees have produced relevant outputs and outcomes. For example, whether a particular research topic is appropriate for the interventions, products, and environmental adaptations stage will be an important judgment, and one that NIDRR generally will announce with a published priority. In this third stage of knowledge development, researchers will test the effectiveness of specific interventions or program configurations.

Accomplishments of NIDRR Researchers

NIDRR researchers and representatives of the disability community generally attribute two categories of accomplishments to NIDRR. The first category includes NIDRR leadership in important areas, pioneering inquiries, and general principles. The second category consists of the work of NIDRR-supported grantees in enhancing the knowledge base and disseminating new findings. The two categories are often complementary and interdependent. The Institute has reached its 25th Anniversary, and a backward glance will highlight some important NIDRR achievements.

The need to examine the many dimensions of the new paradigm of disability, also referred to as the contextual paradigm of disability, provided the catalyst for an innovative collaboration between NIDRR and the American Psychological Association (APA). The *Bridging Gaps* research conference examined the impact of the paradigm shift on psychology and rehabilitation research. One presenter at the *Bridging Gaps* conference described the significant effects of the paradigm shift:

NIDRR's new paradigm for conceptualizing disability is a powerful tool for focusing both research and service delivery systems on interactions that can significantly affect outcomes for persons with disability. If we are trying to understand outcomes through research or attempting to influence outcomes by direct intervention, or both, it is critical to understand and apply this paradigm by paying increased attention to the person-environment interactions. As with any good theory, this one illuminates aspects that were in the dark under the older paradigm and suggests ways of thinking that were not intuitively obvious.[2]

Related to the new paradigm are several new directions in research that also have served to lead the field. Among the research issues are universal design, the concept of an emerging universe of disability, and emphasis on accommodations. NIDRR has been a leading international proponent of universal design, which is defined as design for a built environment that can be used by nearly all people—living, working, and playing together. Rather than using design parameters based on idealized measures of human factors that restrict usability to a narrow segment of the population, universal design works to accommodate a wider range of functional abilities through approaches including modular designs that easily can be modified.

The *emerging universe of disability* refers to a disabled population that is shaped by demographic changes in age, immigrant status, and other socioeconomic factors, by new types of potentially disabling conditions, by consequences of treatments of existing conditions, and by differential distribution of conditions and their consequences. The concept of an emerging universe of disability has helped to increase attention in the last five years to the unique needs of this population, and to multiply the research endeavors focusing on cultural and economic factors affecting disability.

NIDRR has pursued a model for addressing obstacles facing people with disabilities that have shifted from service provision to supports that enable self-direction. Supports may include personal assistance services (PAS), assistive technology, civil rights, and peer support, and involving people with disabilities in the conduct and administration of disability and rehabilitation research. Promoting accommodations and assistive technology have been two areas of NIDRR leadership that are reflected in new public policy, including in the ADA and the NFI. Accommodations may be physical, technological or programmatic, and entitlement to accommodations is a cornerstone of the ADA. Accommodations are particularly important in supporting work and education. NIDRR researchers have developed assistive technology devices addressing information technology (IT), communications and speech, and neurological, mobility, and manipulation issues, among other functional areas. Accommodations also encompass changes in program operations to enable people with disabilities to participate fully; these changes may include times and locations, structure of activities, and accessibility.

NIDRR has sponsored research on supports that help individuals with disabilities make their own choices and direct their own lives. Supports include peer-to-peer and family-to-family programs, PAS, self-advocacy skill development, consumer direction, assistive technology, and environmental modifications, all which have been subjects of considerable NIDRR research.

In 1982, NIDRR convened the first meeting of the member agencies of what is now known as the Interagency Subcommittee on Disability Statistics (ISDS), to coordinate and promote the generation of improved statistical knowledge about disability populations. This committee has met monthly for 20 years. The ISDS achievements include: collaborating to publish a book on statistics of disability populations (Thompson-Hoffman, S. Fitzgerald Storck, I. (Eds.), *Disability in the United States: a Portrait from National Data* (1991); and serving as a consultation and review resource for other public and private agencies designing surveys of individuals with disabilities. The ISDS also has facilitated a substantial amount of sharing and exchange of information among member agencies, and joint funding of projects among these agencies.

Structure of the Plan

The Plan is divided into three parts. Part A includes this introduction and a chapter on NIDRR's target population. NIDRR has, by law, a number of target populations, including people with disabilities and their families; individuals who provide vocational rehabilitation, or medical, technological, and direct support services; educators; policymakers; businesses; and the general public. However, people with disabilities clearly are intended to be the ultimate beneficiaries of all NIDRR activities, and the next chapter focuses on defining and describing that population.

Part B (Managing for Success) addresses accountability, management, and evaluation through the use of a

[2] Nirenberg, B., ''A system for bridging the financial and cultural gaps in the well-being of persons with disabilities'', in *Bridging gaps: Refining the disability research agenda for rehabilitation and the social sciences—Conference proceedings*. Menomonie: University of Wisconsin-Stout, Stout Vocational Rehabilitation Institute, Research and Training Centers, edited by F.E. Menz and D.F. Thomas, 2003, p. 239 (*http://www.rtc.uwstout.edu/pubs/pubs.htm*).

logic model and a strategy of ''managing for results.'' The NIDRR Logic Model provides a theoretical base for the evaluation of program outcomes, and will serve to ensure consistency throughout a planning and feedback cycle. In ''managing for results,'' NIDRR presents its strategy for making its operations more systematic and responsive to the concerns of all its constituents. The management chapter focuses on setting regular, fixed dates for the steps of annual grants competitions—announcement of priorities and closing dates, peer reviews, and grant award announcements—and establishing standing panels for consistency and expertise in peer review. Additionally, NIDRR will focus on setting priorities that encourage greater leeway for applicants in designing research. NIDRR will be enhancing its monitoring and evaluation processes to provide continuous feedback to improve its research portfolio.

Part C discusses three arenas of outcomes achievement: research and development (R&D), capacity building (C–B), and knowledge translation (KT). The R&D arena is divided according to the domains of NIDRR research—employment; health and function; technology for access and function; participation and community living; and disability demographics.

Each domain of the R&D arena may include a discussion of one or more of the identified stages of knowledge development which include: discoveries; theories, measures and methods; and interventions, products and devices, and environmental adaptations. Under each of these domains, NIDRR will develop a set of implementation strategies that will identify potential research that could address the anticipated outcomes in the given domain. NIDRR will publish these implementation strategies as proposed priorities and, following public comment, final priorities annually, on a combined basis.

In the arena of capacity building (C–B), NIDRR has focused its efforts on the personal and professional development of scientists, advocates, and people with disabilities, and is expanding this approach to include development of the capacity of institutions and organizations, especially those that address the needs of underserved populations.

The *Knowledge Translation* (KT) chapter discusses the arena of KT and introduces reforms in NIDRR's current knowledge dissemination program. The new approach to KT features a process for assessing the scientific validity of findings to be transferred, using consortia and other external organizations for evaluation.

Appendix 1 to this Plan lists the NIDRR 2005–2009 Long-Range Plan expert panel members.

II. The Target Population: Definitions and Characteristics

Definitions of Disability

The ICDR, based on a survey of publicly available documents, identified more than 60 definitions of disability in the Federal government alone, generally related to eligibility requirements for benefits or services, but also reflected in major national surveys that determine the Nation's estimates of disability. NIDRR is governed by the definitions in Title II of the Act. The definition that applies to Title II describes a person with a disability as: ''any person who (i) Has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment'' (29 U.S.C. 705).

NIDRR is required to focus especially on experiences of individuals with the most significant disabilities. The Act defines an *individual with a significant disability* in functional terms, the resulting need for multiple vocational rehabilitation services over an extended period of time, and indicates that the definition includes, but is not limited to, a list of specific conditions (29 U.S.C.705). Multiple services over an extended period of time include accommodations needed during the rehabilitation process and/or during subsequent employment. Under this definition of an individual with a significant disability, NIDRR is concerned with finding research solutions for people with all types of disabilities—mobility and manipulation, sensory, cognitive, and emotional. The target population includes individuals of all ages. Section 21 of the Act requires specific attention to underserved populations, those individuals with disabilities who are additionally marginalized by membership in minority racial or ethnic populations.

Prevailing definitions of disability used by Federal agencies do not reflect the new paradigm of disability concepts because the Federal definitions typically stress limitations and do not mention the potential role of accommodations or environmental conditions. The field of disability and rehabilitation research also continues to lack a widely accepted conceptual framework to identify and measure disability. The newer conceptual frameworks all focus on some continuum that progresses from etiology through disease, impairments, and functional limitations, which, when combined with external or environmental conditions, may cause deficits in the performance of daily activities or desired social roles. The latest proposal for classifying disability is the International Classification of Functioning, Disability and Health (ICF) developed by the World Health Organization (WHO), and last revised in 2001.[3] A diagram of the ICF classification schema can be found at *http://www.cessi.net/longrangeplan/icf.htm.*

The ICF allows one to view disability as a dynamic interaction between the person and the environment. ICF's diagram of its classification schema depicts the multiple interactions of the person with the environment, and the various aspects of the person. The ICF provides a method for organizing measures of function, activity, participation, and environmental context. NIDRR and many of its partner agencies are considering the appropriateness of applying the ICF to U.S. populations, and are engaged in assessments of the necessary measurement tools and data systems. A later chapter of this Plan, *Disability Demographics,* presents a more thorough discussion of the ICF.

Prevalence of Disability

Current figures on the number of people with disabilities in the United States indicate an estimated 54 million individuals have disabilities, based on definitions employed in national surveys, and self-reported responses to them. General definitions and descriptions of the target population, in terms of the domains of NIDRR research—employment, health and function, participation and community living, and technology for access and function—are provided in this section. A later chapter of the Plan includes an analysis of the data in current measurement systems, and identifies gaps to be addressed by future research.

General descriptors of NIDRR's target population, drawn from data about the disabled population, show that disability is closely related to aging and poverty. Persons with disabilities are

[3] The ICF represents a revision of the International Classification of Impairments, Disabilities, and Handicaps (ICIDH), which was first published by the WHO for trial purposes in 1980. Developed after systematic field trials and international consultation, it was endorsed for international use on 22 May 2001 by the Fifty-fourth World Health Assembly (resolution WHA54.21). *http://www3.who.int/icf/intros/ICF-Eng-Intro.pdf.*

more likely to be elderly, poor, of low educational status, and unemployed than those with no disabilities. People with disabilities are less likely to participate in community and social activities and are more likely to lack adequate transportation. However, persons with disabilities are about as likely as those without disabilities to have health insurance (relying heavily on Medicare and Medicaid) and somewhat more likely to have an identified source of healthcare. The disabled population is not monolithic, and there are many variations based on type of disability and age of onset, for example, as well as on the demographic characteristics mentioned here.

Tables 1 and 2 describe the overall disabled population—its size, age and race distributions, and the frequency of conditions underlying the disabilities. Table 3 includes type of disability in the characterization. These tables are from the U.S. Census Bureau, Census 2000, Summary File 3.

TABLE 1.—PREVALENCE OF DISABILITY BY AGE AND RACE

Race and Hispanic or Latino Origin	Total population aged 5 and older	Percent with a disability: 5 and older	5 to 15	16 to 64	65 and older
Total	257,167,527	19.3	5.8	18.6	41.9
White alone	195,100,538	18.5	5.6	16.8	40.6
Black or African American alone	30,297,703	24.3	7	26.4	52.8
American Indian and Alaska Native alone	2,187,507	24.3	7.7	27	57.6
Asian alone	9.455,058	16.6	2.9	16.9	40.8
Native Hawaiian and Other Pacific Islander alone	337,996	19	5.1	21	48.5
Some other race alone	13,581,921	19.9	5.2	23.5	50.4
Two or more races	6,206,804	21.7	7.1	25.1	51.8
Hispanic or Latino (of any race)	31,041,269	20.9	5.4	24	48.5
White alone, not Hispanic or Latino	180,151,084	18.3	5.7	16.2	40.4

TABLE 2.—PREVALENCE OF DISABILITY BY AGE AND GENDER

	Total		Males		Females	
	Number	Percent	Number	Percent	Number	Percent
Population 5 years and over	257,167,527	100	124,636,825	100	132,530,702	100
With any disability	49,746,248	19.3	24,439,531	19.6	25,306,717	19.1
Population 5 to 15 years	45,133,667	100.0	23,125,324	100.0	22,008,343	100.0
With any disability	2,614,919	5.8	1,666,230	7.2	948,689	4.3
Population 16 to 64 years	178,687,234	100.0	87,570,583	100.0	91,116,651	100.0
With any disability	33,153,211	18.6	17,139,019	19.6	16,014,192	17.6
Population 65 years and over	33,346,626	100.0	13,940,918	100.0	19,405,708	100.0
With any disability	13,978,118	41.9	5,634,282	40.4	8,343,836	43.0

The following table, Table 3, presents information about three categories of disability—sensory, physical, and mental—by age and gender. The table also includes additional information about major life activities. Thus, these are not unduplicated counts, and the totals exceed the estimated number of individuals who have disabilities.

TABLE 3.—CHARACTERISTICS OF THE CIVILIAN NON-INSTITUTIONALIZED POPULATION BY AGE, DISABILITY STATUS, AND TYPE OF DISABILITY: 2000

	Total		Males		Females	
	Number	Percent	Number	Percent	Number	Percent
Population 5 years and over	257,167,527	100	124,636,825	100	132,530,702	100
With any disability	49,746,248	19.3	24,439,531	19.6	25,306,717	19.1
Population 5 to 15 years	45,133,667	100.0	23,125,324	100.0	22,008,343	100.0
With any disability	2,614,919	5.8	1,666,230	7.2	948,689	4.3
Sensory	442,894	1.0	242,706	1.0	200,188	0.9
Physical	455,461	1.0	251,852	1.1	203,609	0.9
Mental	2,078,502	4.6	1,387,393	6.0	691,109	3.1
Self-care	419,018	0.9	244,824	1.1	174,194	0.8
Population 16 to 64 years	178,687,234	100.0	87,570,583	100.0	91,116,651	100.0
With any disability	33,153,211	18.6	17,139,019	19.6	16,014,192	17.6
Sensory	4,123,902	2.3	2,388,121	2.7	1,735,781	1.9
Physical	11,150,365	6.2	5,279,731	6.0	5,870,634	6.4
Mental	6,764,439	3.8	3,434,631	3.9	3,329,808	3.7
Self-care	3,149,875	1.8	1,463,184	1.7	1,686,691	1.9
Going outside the home	11,414,508	6.4	5,569,362	6.4	5,845,146	6.4
Employment disability	21,287,570	11.9	11,373,786	13.0	9,913,784	10.9
Population 65 years and over	33,346,626	100.0	13,940,918	100.0	19,405,708	100.0
With any disability	13,978,118	41.9	5,634,282	40.4	8,834,836	43.0

TABLE 3.—CHARACTERISTICS OF THE CIVILIAN NON-INSTITUTIONALIZED POPULATION BY AGE, DISABILITY STATUS, AND TYPE OF DISABILITY: 2000—Continued

	Total		Males		Females	
	Number	Percent	Number	Percent	Number	Percent
Sensory	4,738,479	14.2	2,177,216	15.6	2,561,263	13.2
Physical	9,545,680	28.6	3,590,139	25.8	5,955,541	30.7
Mental	3,592,912	10.8	1,380,060	9.9	2,212,852	11.4
Self-care	3,183,840	9.5	1,044,910	7.5	2,138,930	11.0
Going outside the home	6,795,517	20.4	2,339,128	16.8	4,456,389	23.0

Part B: Managing For Success

Preface

This section of the Plan contains two chapters. The first chapter describes NIDRR's logic model for outcomes achievement, which has served as the basis of development of the Plan.

The second chapter details the systematic approaches NIDRR intends to pursue to advance the management of the Institute's operations. A central feature is a move toward a fixed competition schedule. The second chapter also describes efforts to enhance NIDRR's scientific review process, and the emphasis on outcomes evaluation.

I. NIDRR Logic Model

Introduction

NIDRR has based the development of the Plan on its mission statement. The mission statement emphasizes participation in the community by persons with disabilities as the overall objective of NIDRR's investment activities. NIDRR's mission statement was derived from the enabling legislation for NIDRR. In developing its research agenda, NIDRR drew upon accountability guidelines from the Department and OMB, which focus on outcomes of research activities.

To provide a theoretical framework for the Plan and guide its implementation, NIDRR developed its program Logic Model (see Appendix 2), which represents graphically the different types of short-term and intermediate outcomes that NIDRR's investments in R&D are designed to produce or contribute to and the interrelationships among these intended outcomes. The Logic Model also serves as the framework for depicting NIDRR's planned performance assessment and outcomes evaluation processes, which are key to demonstrating the Institute's accountability for research results. The width and density of the upward-directed arrows, at the bottom of the Logic Model diagram, indicate that the degree of accountability and hence intensity of NIDRR efforts in assessment and evaluation is greatest for the short-term outcome arenas.

How the NIDRR Logic Model Contributes to the Long-Range Plan

The value of any logic model is that it provides:

- A tool for outcomes planning and performance management that depicts the ''chain of events'' linking outcome goals to outputs, activities and inputs.
- A vehicle for communicating program goals and guiding program improvement and evaluation.
- A graphic representation or ''blueprint'' of the key elements of a program or intervention, and how these elements will work under certain conditions to ''solve'' identified problems.

Definitions of Components of the NIDRR Logic Model Situation

The uppermost block in the Logic Model, labeled ''situation,'' highlights the gaps in knowledge, skills, policy and practice that hinder attainment of parity in employment, health and function, and participation for people with disabilities compared to the non-disabled population (*see* Appendix 2). The Logic Model depicts the short-term and intermediate outcomes that NIDRR seeks to achieve directly and indirectly through its investments in research and related activities to eliminate these gaps and inform needed changes in policy, practice, behavior, and system capacity. These advancements and changes, in turn, contribute to the long-term outcome of improving the lives of people with disabilities.

Major Domains of NIDRR Mission

The substantive focus of NIDRR's investment activity is R&D applied to maximizing the participation of people with disabilities. This activity is centered on the three major life domains of interest to NIDRR: (a) Employment, (b) participation and community living, and (c) health and function. In the Logic Model, interlocking circles represent these inter-related domains (*see* Appendix 2). The achievement of goals related to the three major life domains is facilitated by technology, which addresses both access and function, and knowledge of disability demographics, including characteristics and trends in the population of people with disabilities. Policymakers, service providers, researchers, and disability advocates are the principal users of demographic data. NIDRR is uniquely positioned to address these inter-connected domains.

The *employment* circle of the Logic Model represents research on employment-related activities and strategies to improve employment outcomes and labor force participation. Lack of parity in employment remains one of the greatest barriers to independence for people with disabilities. Research is needed on strategies to enable Americans with disabilities to access careers, integrate into the workforce, and participate as full citizens in the economic marketplace. Employment, although an integral part of community participation, is treated as a separate domain because of NIDRR's statutory relationship with the Federal-State vocational rehabilitation program, and because of its overwhelming significance to people with disabilities and society.

The *participation and community living* circle of the Logic Model represents the interaction with the social and built environment in a way that maximizes full inclusion and integration of people with disabilities. This domain focuses on direct supports that increase the availability of acceptable options and opportunities to make choices and enhance participation in everyday activities. For the promise of full participation and community living to become a reality, people with disabilities need safe and affordable housing; access to transportation; access to the political process; and access to the services, programs, and activities offered to all members of the community at public and private facilities.

The *health and function* circle of the Logic Model represents individual

factors such as the structure and function of the human body, as well as strategies to prevent, identify, assess, or resolve causes and consequences of disability. In this domain, as in the others, NIDRR stresses the importance of individual choice—choosing providers, services and objectives. The health and function domain encompasses research to achieve outcomes at the individual level—improved functioning, fitness, and health, including mental health. This domain also addresses goals at the system level, such as more effective service delivery systems, better access (financial and logistical) to healthcare services, and the assessment of rehabilitation effectiveness.

The outer ring of the Logic Model includes two additional domains: *technology for access* and *function and disability demographics.* Technology for access and function is essential to community integration, employment, and health and function, and plays a major role in enabling a good fit between individuals with disabilities and the environment. The domain of disability demographics emphasizes describing and characterizing people with disabilities to provide a better understanding of the phenomenon of disability. Improved statistics on disability and participation are critical to developing policies and strategies that will be effective in addressing barriers to participation faced by individuals with disabilities, and in assessing the Nation's progress in improving life outcomes for individuals with disabilities.

Long-term Outcomes

Generally, outcomes refer to anticipated or actual changes in a target system that occurs from carrying out program activities and outputs. Long-term outcomes are the desired end-results of a program at the societal level; long-term outcomes are indicated by changes in overall conditions of the target population. Given their scope, long-term outcomes go beyond the direct or indirect influence and control of any one agency. Because of this, NIDRR is not accountable for producing, by itself, societal level improvements in the overall conditions of people with disabilities. Rather, the Institute's long-term outcomes, which focus on eliminating disparities in employment, participation and community living, and health and function, serve as critical anchor points guiding all strategic planning and research management efforts. Consistent with the Act, NIDRR's span of accountability centers on generating, romoting, and disseminating short-term outcomes that consist of new knowledge resulting from the combined accomplishments of its grantees. These short-term outcomes, when combined with KT activities, can be used to inform policy, change practice and behavior, and expand system capacity, which in turn will contribute to improving the lives of individuals of all ages with disabilities.

Short-Term Outcome Arenas

Short-term outcomes refer to advancements in understanding, knowledge, skills, and learning systems that result from the successful implementation of program activities and the use of R&D related outputs. Within the Logic Model and in the context of disability and rehabilitation research, there are three short-term outcome arenas, corresponding to NIDRR's investments in three functional programs. These functional arenas are: (1) C–B; (2) R&D; and (3) KT, corresponding to NIDRR's three strategic goals (*See* Part C). Given its centrality to the NIDRR mission, the R&D arena is further divided to reflect three stages of knowledge development. The three stages recognize that advancements in knowledge may occur through (a) Discoveries, (b) new or improved theories, measures, and methods, or (c) interventions, products, devices, and environmental adaptations. The generation of new knowledge in this short-term outcomes block is the primary area of direct responsibility for which NIDRR holds itself accountable.

Although the three strategic goals are discussed separately in Part C of the Plan, they are inextricably intertwined, in that research is supported by C–B and feeds KT, but the process is not linear. Inevitably, the generation of new knowledge raises new questions, calls for new skills and leads to further discoveries, theories, and interventions, multiplying the efficacy of NIDRR's investment.

Research and Development

R&D is divided into three generally sequential, but closely related, outcome arenas, corresponding to stages in knowledge development. Characteristically, research begins with significant discoveries (stage one) and moves through theory, measure, and method development (stage two) ultimately to enable the development of effective new and improved interventions, products and devices, and environmental adaptations (stage three). In this context, a product may be a new device or technique. An adaptation may include methods to improve physical, behavioral, or virtual environments.

The first two stages—discoveries and new or improved theories, measures, and methods—provide the critical foundation for new ideas, information, analyses, and scientific tools (*i.e.*, theories, measures, methods) upon which to base the conduct of valid and reliable research and development activity. NIDRR will shape future priorities based on considerations of the state of knowledge development in a particular subject area to determine, for example, if an adequate theoretical basis exists upon which an intervention can be developed.

Capacity Building

NIDRR will focus its specific C–B activities primarily on the need to train new investigators to enable them to pursue topics of importance to NIDRR's research agenda, and to otherwise increase the capacity of the system to carry out complex studies. The Institute's training agenda includes cross-training of individuals already skilled in other disciplines in topics relevant to disability issues, and training of promising young investigators, with particular emphasis on underrepresented groups and persons with disabilities to facilitate their participation in the research process. In addition, NIDRR specifically supports institutional C–B through targeted initiatives. Finally, NIDRR plays an active leadership role throughout the Department and the Federal government in raising awareness of the needs of people with disabilities and issues of equity.

Knowledge Translation

Equally critical to NIDRR's mission is the ability to effectively translate and transfer the knowledge and products generated through R&D activities. NIDRR must successfully disseminate this information for use by intended target audiences, including individuals with disabilities and their families and caregivers. Indeed, NIDRR will include an assessment of the potential for translation of knowledge gained through the project to the target audiences in considering new projects for support. KT includes the important work of technology transfer that directly promotes the widespread commercialization and utilization of research results. Previously referred to as the ''Knowledge Dissemination and Utilization (KDU)'' component of NIDRR's agenda, this arena has been renamed KT to reflect the evolution of translation science as a field and increased emphasis in the Federal

government on the importance of systematic review and synthesis of R&D results.

Intermediate Beneficiaries

This component refers to the immediate intended beneficiaries of NIDRR products and services as well as the recipients of the outputs and outcomes generated by NIDRR-funded grantees. This array of recipients includes individuals with disabilities and family members, researchers, clinicians and engineers, educators, service providers, product developers, policy experts and decision-makers, Federal and non-federal partners, industry representatives, employers, media, and consumer advocates.

Intermediate Outcome Arenas

Intermediate outcomes refer to changes in policy, practice, behavior, and system capacity that occur in part as a result of the external use or adoption of NIDRR-funded outputs and advances in knowledge. Unlike short-term outcomes, intermediate outcomes are under the indirect influence of program activities and outputs and consist of changes in decision-making and societal action. Because of the multiple influences on these intermediate outcomes, NIDRR can only partially influence these outcomes, and thus cannot be held accountable to the same degree as for short-term outcomes.

Intended Beneficiaries

The intended beneficiaries of NIDRR's overall investments are people with disabilities and their families. These individuals may benefit either directly, or more likely, indirectly through changes in policy, practice, behavior, and system capacity brought about through NIDRR's investments. The of purpose of NIDRR's activities, as described above in discussing the *Long-term Outcomes,* is the elimination of disparities in employment, participation and community living, and health and function. Intended beneficiaries include people with impairments or limitations in mobility, communications, cognition, and behavior.

Performance Assessment & Outcomes Evaluation

The last component of the NIDRR Logic Model depicts NIDRR's multi-level evaluation system. The intensity of the assessment and evaluation efforts is proportional to the thickness of the arrows of the Logic Model, and is greatest for short-term outcomes (*see* Appendix 2). Performance assessment takes place annually and is focused on evaluating grantee progress and the quality and relevance of the aggregate of R&D findings and accomplishments. Moreover, the performance assessment identifies the strengths and weaknesses of portfolio areas, which are defined as clusters of projects in NIDRR's domains and the Institute's program funding mechanisms. Data from these annual performance assessment and portfolio reviews are used to satisfy GPRA and PART requirements and inform program improvement efforts. Outcomes evaluation, in contrast, occurs periodically and is focused primarily on a retrospective assessment of the long-term achievements in a portfolio area relative to both short-term and intermediate outcomes, as well as any contributions at the societal level toward improving the overall condition of people with disabilities. Both types of evaluations are performed by independent review panels comprised of scientists, engineers, clinicians, service providers, policy analysts, industry representatives, consumer advocates, individuals with disabilities, and family members.

Contextual Factors

Some of the factors that may change the activities implemented by NIDRR, both directly and indirectly, are called ''contextual factors'' and are shown at the base of the Logic Model (see Appendix 2). Changes may be mandated directly in changing policies or indirectly in a changing environment that might require new strategies. The contextual factors include variable funding, scientific and technological advancements, societal attitudes, economic conditions, changing public policies, and coordination and cooperation with other government entities.

II. Managing for Results

A. Overview

In this chapter, NIDRR presents the management agenda for implementing its disability and rehabilitation research portfolio. Management of NIDRR research programs and projects encompasses many distinct aspects: provision of a results-oriented planning environment, selection and scheduling of priorities, operation of program mechanisms to carry out research and related activities, organization and monitoring of projects, and support for interagency and international research efforts.

To further advance the management of research and related activities, NIDRR is developing plans to improve its grant-making procedures and to expand the scope and enhance the effectiveness of its standing peer review panels. The Plan delineates and clarifies the processes of decision-making, and includes a new emphasis on research portfolios and research clusters, which use the different program mechanisms to integrate disparate research projects in a given topical area. Over the lifetime of the Plan, NIDRR will systematically evaluate all aspects of its management activities.

B. Results-Oriented Planning Environment

To facilitate advancements in rehabilitation and disability and rehabilitation research, NIDRR will delineate and plan strategic goals, identify specific program options for achieving the goals over time, and manage a wide range of projects derived from priorities based on these goals and program decisions. GPRA requires that all Federal managers link resources to results through use of outcome performance measures.

NIDRR research comprises a diverse portfolio of projects. As is true of overseeing and directing any sizeable portfolio of investments, management must set criteria for choices, time investments, execute decisions, monitor returns, evaluate outcomes, rebalance as necessary, and report results. NIDRR anchors its portfolio management and performance evaluation systems in the legislative mandate set forth in the Act. As described in the previous chapter, NIDRR translates the legislative mandate into its mission and strategic goals through continually assessing performance, measuring project progress and short-term outcomes, tracing intermediate outcomes as the target systems use the projects' results, and identifying long-term outcomes as depicted in the NIDRR Logic Model.

Within the accountability goals established by GPRA and PART, NIDRR is responsible for measuring and reporting the progress of its many research projects. NIDRR managers and program stakeholders face the continuing challenge of delineating longer-term achievements, as these will improve the use of scarce resources, advance outcome measures, and provide feedback on strategic goals.

Priority Planning

NIDRR, like all Federal agencies, must plan and schedule its decision-making for portfolio management over a multi-year time frame. At any given time, NIDRR is engaged in implementing and managing ongoing projects, conducting grant competitions and making new awards, planning for the next immediate budget cycle, and assessing the

consequences of multi-year funding decisions for subsequent funding cycles. Table 4 presents time frames and descriptions of activities for the management of NIDRR research.

TABLE 4.—TIME FRAMES FOR PLANNING AND IMPLEMENTING MANAGEMENT IMPROVEMENTS

Time horizon	Process	Description of activities	Product
36–24 months prior to start of fiscal year (FY).	Pre-planning	Review Plan, strategic and performance goals, portfolio of existing projects to address emerging opportunities and ongoing needs.	Potential priority areas in broad terms.
24–18 months prior to start of FY	Planning	Initial environmental scan, identification of potential projects.	Refined list of priorities.
9 months prior to start of FY through start of FY.	Program Priority Choices	Based on budget and identified goals and criteria, establish specific priorities and issue announcements.	Priorities.
During FY	Pre-Award Decision and Award	Make award decisions based on peer review and program considerations.	Projects chosen for award based on peer review and extent to which proposed activities match Plan.
1 to 5 years post-award	Post-Award Management	Throughout project periods, monitor progress, assess trends, feed back data for planning and portfolio decisions.	Data on project and center operations.
3–10 years post-award	Performance evaluation	Review goal measurements, programs, and combinations of projects for outputs, outcomes, and impacts.	Documented outcomes.

Timeline

This Plan describes a number of important changes that will improve the way NIDRR manages its multiple responsibilities to constituencies, grantees and potential grantees, and the public. These changes will take five years or longer to be fully realized. The timeline for completion of these efforts is identified in Table 5.

TABLE 5.—TIMELINE FOR MANAGEMENT ACHIEVEMENTS

Item	Description/Implication	Timeframe
Regulation changes	Update selection criteria and legislative references; implement small grant authority; describe procedures for resubmission; establish proposal content.	1 year.
Fixed competition schedule	Annual announcement of priorities; notices inviting applications, peer reviews, and grant awards at regular dates.	3 years.
Standing panels for competition review	Enhance expertise of standing panels	3 years.
Evaluate clusters	Using expert panels, review topical project clusters	5 years.
GPRA panels	Establish standing panels for annual review of quality of outputs, research rigor, short-term outcomes.	3 years.
Environmental scan	Establish procedures for conducting comprehensive studies of relevant technological, scientific and policy changes with implications for disability.	4 years.
Independent Expert review	Conduct comprehensive review by independent panel of status of research on disability.	3 years.

To accomplish a number of goals, NIDRR plans to initiate efforts to change regulations governing the management of its research portfolio. NIDRR will make changes to selection criteria that will improve the quality of its peer review and provide for more consistent evaluation. Moreover, the initiation of a streamlined, systematic process for resubmission of applications would be useful for grantees and peer reviewers. The establishment of elements needed for a standardized proposal narrative would facilitate a more consistent review. The following steps are intended to advance NIDRR research management:

- NIDRR will implement a regular, fixed competition schedule. This will facilitate the recruitment and retention of standing panels of reviewers.
- NIDRR will undertake a rotating review of all major components of its research portfolio.
- In order to meet the obligations of GPRA, NIDRR will establish expert panels to conduct an annual review of its clusters of projects. Data for this evaluation will be drawn from existing (or planned) data sources to the maximum possible extent, *e.g.*, using the Annual Performance Report (APR) as one source document.
- NIDRR intends to institute systematic ''environmental scans'' to help ascertain elements of technology, science, or policy that may impact research to be conducted in the future. These scans shall be carried out by NIDRR staff, making use of all available data sources, and may involve experts and other stakeholders as needed.
- As part of the ongoing evaluation of the appropriateness of the NIDRR research portfolio, NIDRR will, together with other Federal partners, initiate an

external study of disability research and related topics.

Funding Mechanisms and Strategies

NIDRR operates a number of program mechanisms to support research and related activities. These mechanisms vary in purpose, duration, and resource allocation. Rehabilitation Research and Training Centers (RRTCs) and the Rehabilitation Engineering Research Centers (RERCs) are primary recipients of NIDRR resources and carry out many of NIDRR's major research efforts.

NIDRR support of RRTCs is specified in the Act. RRTCs are funded to conduct coordinated and advanced programs of research, training, and information dissemination in priority areas that are specified by NIDRR. RRTCs are expected to be multidisciplinary; involve people with disabilities and their families; provide advanced research training, as well as training for rehabilitation practitioners, consumers, and families; and provide undergraduate education. RRTCs are designed to be national centers of scientific research and resources for the disability and rehabilitation field, providing information and technical assistance to a broad constituency. Each RRTC typically is funded for five years.

RERCs also are specified in the Act, and conduct engineering and technological research to design, develop, and test equipment, technologies, assistive devices, and methods that will remove environmental barriers and provide innovative models for rehabilitation technology service delivery.

The Act also provides for discrete research projects and other related work. These undertakings are carried out either through Disability and Rehabilitation Research Projects (DRRPs) that are directed toward solving specific problems identified by NIDRR, or through the Field-Initiated (FI) Program.

A program of investigator-initiated research was created by NIDRR in 1984, under its R&D authority. This FI program supplements NIDRR's directed research portfolio by addressing diverse research issues in promising and innovative ways. FI research projects cover all aspects of NIDRR's domains, including employment, independent living, medical rehabilitation, and development of new technologies, and address all disability populations with a wide range of research approaches.

The Act also provides for two C–B programs—Fellowships and Advanced Rehabilitation Research Training Grants (ARRTs). Fellowships are awarded to individuals in various stages of their careers to support one year of independent research in a selected area. ARRTs are awarded to institutions of higher education to support advanced training in research in any discipline investigating issues of disability and rehabilitation. ARRTs, which typically are funded for five years, provide stipends to trainees and funding for mentoring, instruction, hands-on research experience, and opportunities for presentation and publication.

NIDRR also supports service demonstration and research programs to develop and evaluate improved methods and systems of rehabilitation care for individuals with spinal cord injury, traumatic brain injury, and burns.

Fixed Competition Schedules

NIDRR will move toward a fixed schedule for competitions that will enable potential grantees to better plan application efforts, facilitate NIDRR's work with reviewers, and increase efficient grant-making operations at NIDRR. Fixed schedules will maintain consistent dates for key activities in the competition process, including announcements of final priorities, application due dates and award dates. These goals are consistent with the Department's overall management directions. To accomplish these goals, NIDRR intends to publish all of its proposed priorities and, following public comment, final priorities annually, on a combined basis. This will allow NIDRR's constituents to view the overall scope of NIDRR's planned priorities and to evaluate and submit comments on these priorities at one time rather than at different times throughout the year.

Managing for Results at NIDRR

NIDRR research management will be guided by many elements and will employ several research planning and decision-making principles in its work. These principles include:

- NIDRR will implement its research portfolio through use of ''clusters'' of projects that address common subject matters and employ various funding mechanisms. This management approach will be used for specified types of R&D activities and will be grouped around the domains of the NIDRR Logic Model. Portfolio management will utilize strategies that organize and review clusters or groups of related projects. The organization of program analysis by common elements, including subject and the target population that will benefit, improved collaborations, sequencing of activities and related methods will encourage collaboration among researchers. Management will facilitate communication among related projects through meetings, technical assistance, research compilations, and related activities.
- To establish the context for its research, NIDRR will assess portfolio investments and opportunities by applying criteria that ascertain the importance of proposed activities in relationship to NIDRR's mission and authority; past, current, and emerging projects; scientific advances; and work of research partners in the U.S. and abroad. Distinguishing the context for a NIDRR initiative may include identifying the legal basis for action, determining partner agency needs, capitalizing on opportunities to respond to new discoveries, continuing effective research, or supporting a national initiative.
- NIDRR will communicate decisions clearly and understandably to a wide range of audiences. The complex interrelationships inherent in disability and rehabilitation research require that NIDRR's decision making process be clear and understandable to a wide range of audiences. Success will be attained through increasing public input to planning; holding regularly scheduled competitions; and continually assessing the quality of communications with stakeholders.
- NIDRR will make choices regarding resource allocation using the best available evidence. NIDRR will ensure that explanations of directed activities are clear to external observers in reviews of funding opportunities and actual awards. Portfolio decisions will reflect advisory input such as scientific conferences, literature reviews and public comments. NIDRR will provide explanations for the use of ''directed'' versus ''non-directed'' (*i.e.*, NIDRR priorities vs. FI) research.
- NIDRR will allocate resources across program clusters to achieve the best relationship of costs and benefits. Factors for consideration may include the anticipated size of the investment; available funds; congruence with NIDRR's Logic Model; and risks of failure to act, including lost value and expertise.
- NIDRR will build on current capacity and promote the development of new capacity to anticipate future needs. C–B has two important dimensions in NIDRR's management framework. First, NIDRR strives to assess readiness of potential applicants to address the specific research topics. Second, some NIDRR program activities have as their primary purpose the enhancement of future disability and

rehabilitation research efforts through improved resources.

For both dimensions, NIDRR management must assess the ways in which investments support not only new research areas, but also the development of methods and measures that improve outcome assessment and evidence-based practices, and the investment in people to improve research capacity. NIDRR also has responsibilities to address areas of special need, such as improving services and opportunities for racial and ethnic minority populations (see section 21 of the Act); research capacity to address specific geographic issues; and training for individuals with disabilities and their families.

• Quality program management at NIDRR will require the further development of internal and external controls to provide knowledge of ongoing and completed research and its utility to stakeholders.

Internal and external controls will assist in assessing program progress in implementing the Plan. High-quality scientific peer review with preeminent peers will ensure high quality research. Participation of people with disabilities at all stages of NIDRR-funded work also will contribute to quality outcomes. Monitoring of project and research activity will ensure that funds are spent wisely, efforts are on target, effective feedback is provided, and best practices are identified. Formative and summative ''in-process'' peer reviews will continue to establish quality mechanisms for evaluating and disseminating research findings.

Peer Review Processes

Application review is central to efforts that ensure the integrity and validity of the research agenda. This review provides both face and content validity to the research portfolio. Thus, it is imperative that this process be as effective as possible.

As mandated by the Act, NIDRR continues its commitment to a review of its research portfolio by a fully representative audience that includes both researchers and consumers. NIDRR envisions a standardized peer review process across NIDRR's research portfolio, with standing panels servicing many program funding mechanisms.

NIDRR will establish standing panels as part of an overall revision of program operations. By providing standing panels, NIDRR anticipates achieving a more consistent review of applications, thereby encouraging continued growth and improvement in those applications. A fixed competition schedule, as described above, will allow panelists to reserve time for the reviews and enable a higher percentage of individuals to complete their term of service. Such consistency should increase reviewer familiarity and skill with NIDRR research programs, allow effective role modeling by panelists, and ensure more effective training efforts. NIDRR will provide training to all panelists to optimize their effectiveness in reviewing proposals.

Monitoring

As is depicted in the NIDRR Logic Model (Appendix 2), NIDRR will evaluate the outcomes of its grantee research efforts; measures of success will vary by goal and topic. NIDRR will use the results of outcomes research to judge projects for productivity gains, economic value, practitioner satisfaction, and end user satisfaction. Product indicators will measure how a new or improved tool contributes to better rehabilitation technologies. Citations and bibliometrics on a grantee's research efforts will be applied to identify widespread use of a new or improved theory, measure, or method.

Historical tracing—examining research to outcome, or backward from outcome to contributing research—will be employed to identify key times when a theory, measure, or method advanced the state of a particular field.

NIDRR is developing a systematic tracking of instruments developed by grantees (Tools List), which, along with patent counts, will serve to verify outcomes of research methods and products. Systematic reviews or meta-analyses will be used to evaluate aggregated research outcomes. NIDRR will employ survey techniques to indicate widespread or specialized use of a tool or measure. Qualitative studies of social and behavioral dimensions of research activities indicate the benefit gained from improved tools. NIDRR also works with professional groups to identify increased use of new measures in research and practice guides. The Federal government requires that interventions research adhere to standards for Human Subjects Protection, privacy, and data safety monitoring; such standards are monitored in conjunction with appropriate Department officials.

Research Cooperation

As a leading Federal agency involved in disability and rehabilitation research, NIDRR works closely with numerous other Federal agencies. These working relations are fostered through memoranda of understanding and other interagency agreements that facilitate joint projects. These agreements have resulted in research jointly sponsored with the Substance Abuse and Mental Health Services Administration, the Agency for Healthcare Research and Quality, the Centers for Disease Control and Prevention, the National Institutes of Health, and other components of the Department of Health and Human Services (HHS). NIDRR also conducts employment research jointly with the U.S. Department of Labor and conducts NFI-related activities with the Office on Disability of HHS, through memoranda of understanding.

Another avenue for interagency cooperation is participation in groups such as the Washington Research Evaluation Network (WREN), a partnership of Federal agencies that serves as a forum for the R&D evaluation community in exploring new approaches that will improve the management of science and technology organizations. These efforts will assist NIDRR as it examines and implements performance measures to assess the quality, effectiveness, and utility of its R&D investment.

Interagency collaborations can facilitate addressing mutual and individual concerns in research areas. A major mechanism for fostering such collaboration is the ICDR.

Interagency Committee on Disability Research

The ICDR, authorized by the Act, will continue to promote coordination and cooperation among Federal departments and agencies that conduct disability and rehabilitation research programs. NIDRR is the administrative home of the ICDR, and the Director of NIDRR chairs this committee. Representatives of more than 35 Federal entities regularly participate in the ICDR. In addition to the full committee, five subcommittees address specific issues: Disability Statistics, Medical Rehabilitation, Technology (including Technology Transfer), Employment, and the NFI).

The goals of the ICDR and its subcommittees are to increase public input to ensure that research efforts lead to solutions for identified needs, to improve the visibility of Federal disability research in general, and to increase collaboration among agencies. The ICDR meets quarterly, and subcommittees meet either quarterly or more frequently. As required by the Act, the ICDR submits an annual report of its work to the President and Congress. Under the NFI, funds are allocated to support the ICDR in coordinating Federal disability research programs relative to technology. The Plan proposes to support the continued work and accomplishments of the ICDR;

information on the ICDR can be accessed on the Internet at: *http://www.icdr.us*.

International Research Program

The magnitude of the overall Federal R&D effort directed to disability and rehabilitation research is relatively small, compared to R&D efforts in other areas. Thus, international cooperation and exchange has been viewed as an important mechanism by which the critical mass of disability and rehabilitation research can be increased. Section 204(b)(6) of the Act states that the Director of NIDRR is authorized to: ''* * * conduct a program for international rehabilitation research, demonstration, and training * * *'' and many nations look to the U.S. as a model for disability and rehabilitation research in technology.

NIDRR has funded the international exchange of information and experts. NIDRR projects have demonstrated the value of international collaboration in developing technology for individuals with disabilities in prosthetics development—for example, a sand casting system that greatly facilitates prosthetic socket fabrication. Additionally, addressing the issues concerning Web accessibility continues to be mutually beneficial to NIDRR's constituents and its international partners.

NIDRR also has funded research in the multicultural aspects of disability and rehabilitation research and in understanding how cultural perspectives affect the development and implementation of intervention strategies and the interpretation and analysis of disabilities.

Thus, there is a compelling reason for NIDRR to continue its work on projects with an international scope, including issues of concern for individuals with disabilities in the Middle East, Asia/Pacific, Africa, Europe/North America, Latin America, and Caribbean regions. There is a possibility for creating further collaborations through the Department and the United States-Mexico Binational Commission. NIDRR supports the United Nations Educational Scientific and Cultural Organization (UNESCO) Flagship activities to ensure the inclusion of children with disabilities in UNESCO's Education for All (EFA) plans. NIDRR is interested in developing closer relationships with funding agencies in other nations. A potential avenue for this would be the United States-European Union (US-EU) Science and Technology Agreement signed in 1997. NIDRR could operate under this agreement to expand cooperation with a comparable governmental agency in the European Commission (EC). The possibility of coordinated calls for research on both sides of the Atlantic could greatly increase the critical mass of research and development of technology, further improving the lives of people with disabilities in the United States and other nations.

Part C: Addressing Outcomes Through Research and Development, Capacity Building, and Knowledge Translation

Preface

NIDRR has built its program of funded activities around the three arenas of R&D, C–B, and KT. For each of these arenas, there are strategic goals and objectives. This part of the Plan presents NIDRR's Strategic Goals and Objectives, and then presents more detailed chapters on R&D, C–B, and KT.

Strategic Goals and Objectives

Strategic goals are broad statements of a program's aims, whereas strategic objectives specify the means by which the goals will be carried out. These strategic goals and objectives are intended to communicate NIDRR's main themes and directions, and not to serve as measurable operational objectives. NIDRR has developed the following set of comprehensive strategic goals and objectives that reflect the program's mission and align with both the targeted outcome arenas depicted on the Logic Model (see Appendix 2) and the Institute's GPRA performance measures.

Advance Knowledge Through Research and Related Activities

Generate scientific knowledge, technologies, and applications to inform policy, change practice, and improve outcomes.

- Objective 1a: Contribute evidence-based theories, information, and analyses to increase understanding and enhance knowledge of disability and rehabilitation related concepts, issues, and emerging trends and developments.
- Objective 1b: Provide new and improved measures and methods to strengthen the scientific basis of disability and rehabilitation related research, policy, and practice and increase the generalizability of findings and utility of products.
- Objective 1c: Develop new and improved interventions, programs, products, devices, and environmental adaptations to guide decision-making, change practice, and enhance access, function, and opportunities for full participation.

Goal 2: Advance Knowledge Through Capacity-Building

Increase capacity to conduct and use high quality and relevant disability and rehabilitation research and related activities designed to guide decision-making, change practice, and improve the lives of individuals with disabilities.

- Objective 2a: Promote productive partnerships with other Federal agencies and non-federal organizations and facilitate improvements in R&D infrastructure to strengthen the research portfolio, support clinical trials, and increase the effectiveness of KT efforts.
- Objective 2b: Encourage multidisciplinary applications representing a broad array of relevant fields and from diverse individuals and underrepresented institutions to balance the research portfolio and strengthen the capacity to solve problems in a creative, state-of-the-art manner.
- Objective 2c: Enhance opportunities for cross-disciplinary and advanced research training in disability and rehabilitation-related fields and improve the quality of training provided to qualified individuals, including students with disabilities and from minority backgrounds.

Goal 3: Advance Knowledge Translation

Promote the effective use of science-based knowledge, technologies, and applications to inform disability and rehabilitation policy, improve practice, and enhance the lives of individuals with disabilities.

- Objective 3a: Promote external review of the quality of NIDRR funded research and related activities through participation in independent scientific collaborations (e.g., Campbell and Cochran Collaborations) and registries.
- Objective 3b: Develop tools and methods to facilitate effective accumulation, translation, dissemination and transfer of disability and rehabilitation related knowledge, technologies, and applications to relevant stakeholders.

These strategic goals and objectives are addressed in the following three chapters: I. Research and Development, II. Capacity Building, and III. Knowledge Translation.

I. Research and Development

At the heart of NIDRR's mission is supporting research to improve the lives of people with disabilities. The associated strategic goal for this is to generate science-based knowledge, technologies, and applications to inform policy, change practice, and thereby improve overall conditions for people with disabilities. This section focuses

attention on the major domains as seen in the Logic Model, beginning with employment of people with disabilities, which is a major concern of the Department and of NIDRR. Similarly, NIDRR is interested in maximizing choices for persons with disabilities as they select their dwellings, transportation, and life activities. Health and function are essential components of such life choices. A focus on technology that supports these choices is of central importance to NIDRR.

As NIDRR establishes goals and priorities for effective resource allocation, the Institute is interested in improving knowledge about people with disabilities, including the nature and duration of disability, where they live, and what kinds of jobs they have.

The future research agenda for NIDRR rests on the strategic goals and objectives defined above and on the long-term outcomes depicted in the Logic Model, which call for eliminating disparities in employment, participation and community living, and healthcare between people with disabilities and the general population. However, because achieving this desired end-result requires changes in the overall condition of people with disabilities that go beyond the reach of the Institute's mission, it is necessary to articulate an additional set of more operational performance goals. Unlike long-term outcomes, performance goals, which may be output or outcome-oriented, lie within a program's span of accountability and consist of tangible, measurable objectives, against which actual accomplishments and achievements can be compared.

Within the NIDRR research agenda, performance goals are formulated separately for each of the major domains of the Institute's mission. However, it is important to note that because of differences in the needs of consumers and levels of knowledge and methodological development across domains, the number of articulated performance goals may differ among the domains. NIDRR will publish specific implementation strategies in the form of proposed priorities and, following public comment, final priorities annually, on a combined basis.

A. Employment

Overview

For many people with disabilities, employment that is challenging, fulfilling, and fairly and adequately compensated is the ultimate rehabilitation outcome. For those individuals interested in workforce participation, employment shapes the lives of individuals with disabilities at all stages of life. Successful workforce participation requires supports and partnerships of employers, service providers, workers, and often a network of family, friends, and community entities. At the individual and systems level success is often measured in terms of acquisition, improvement, and enhancement of skills, productivity, earnings, job retention and advancement, and benefits. NIDRR advances employment-related innovations that contribute to success at work and subsequent improvements in quality of life in education, home, and community.

Research can be used to strengthen the scientific basis of disability-related employment policy and practice. Studies provide validated information that improve understanding of employment policy and practice as it affects the workforce and society. Moreover, research findings related to career planning, job entry, advancement, and retention can assist individuals with disabilities, particularly those with significant disabilities, in moving from dependency on public benefits to self-sufficiency, or from underemployment into work that is consistent with the individual's strengths, abilities, and interests. Examples include workplace assistance, methods, and techniques developed from productivity studies, and accommodations improve on-the-job outcomes.

Employment research supported by NIDRR for people with disabilities strives to identify proven job enhancements and career building blocks to sustain them in the workforce. NIDRR supports studies to improve knowledge of societal, environmental, individual, and behavioral factors that serve as barriers or facilitators for employment.

The Context for Research on Employment

The employment policy environment has changed dramatically in recent years. Laws such as the Ticket to Work and Work Incentives Improvement Act (TWWIIA) and other initiatives were designed to erase some of the disincentives to work that current public policy and programs present for beneficiaries. Sound research at the systems and individual levels is necessary to evaluate the impact of long-standing policies and programs, and to assess new developments as they are considered for national implementation, modification, or elimination.

Both individuals and employers are intended beneficiaries of NIDRR employment research. For individuals, employment research can develop and improve interventions for and measures of individual function and task performance at all stages of life. NIDRR's employment research may be general across disabilities or specific to certain target populations. Many employment issues, particularly those related to economic and social policies, have similar impacts on people with different disabilities. However, some aspects of employment research, such as accommodations at the work site or applications of technology, may be specific to persons with physical, communication, cognitive, or psychiatric disabilities and NIDRR will address their specific needs as appropriate.

Employers are important targets for NIDRR research. Research addresses methods to integrate unique needs of employers and disability populations to improve employment outcomes across the life span. NIDRR research can lead to more accessible work environments. R&D activities seek to address employer concerns about costs of accommodations and generate innovative approaches to alleviate obstacles to accommodations. Research defining employer perspectives on hiring and retaining people with disabilities is in early stages. Continued research will help in understanding how economics, legal issues, healthcare, functional status, and attitudes drive employer practices with regard to people with disabilities. Employer-oriented, or demand-side, research will help policymakers, employers, and service providers develop better strategies for meeting the employment needs of people with disabilities and hiring entities.

Employment researchers must overcome significant challenges in their work, including: Diverse employment settings and service systems; limited access to work settings to test interventions; inadequate research methods and measures; unsatisfactory models for designing new employment initiatives; difficulty in arranging cooperation of service partners and employers; and work disincentives. Consequently, it is critical for NIDRR to sponsor studies that pose significant research questions, use sound methods, and produce results that are generalizable to large numbers of people with disabilities.

Disability and rehabilitation researchers explore methods, costs, and results of services of rehabilitation programs or supported employment, including studies of natural supports at work as they relate to employment

outcomes. Researchers address PAS challenges and solutions for work. PAS aids an individual with a disability in performing activities of daily living on or off the job. Rehabilitation technology and universal design require systematic application of products, environmental adaptations, and engineering. Technological innovations support enhanced personal function and address the barriers confronted by people with disabilities in many areas, including employment.

For a person with a disability, personal and environmental factors such as health, age, work incentives and disincentives, accommodations, functional capacity, education, PAS, housing and transportation influence labor force participation. Policy and societal changes, including technological advancements, continually change the questions that must be asked about labor force participation, earnings, and work.

NIDRR employment research addresses a culturally diverse population across age, gender, ethnic, disability, and socioeconomic groups. In addition to addressing the general population of people with disabilities, NIDRR develops strategies for targeted services for subpopulations. For example, research identifies needs of persons who are blind or visually impaired, or who are deaf or hard of hearing. To assist another subpopulation of people with disabilities, NIDRR works with the Center for Mental Heath Services in HHS on the employment needs of persons with mental illness. NIDRR works with the Social Security Administration on disability criteria for benefits, return-to-work, and the TWWIIA.

Research relates transitions across the life span to employment outcomes for people with disabilities. Transition services promote movement from educational settings and post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, and community-based services to participation in the labor force. Activities address individual student needs, taking into account individual preferences and interests. NIDRR's employment research addresses the lifelong challenges and opportunities of transitions in employment of people with disabilities.

Accomplishments in Employment Research

Research on theories, measures and methods for employment has:

- Developed, at the University of North Carolina, a method to analyze administrative complaints and lawsuits filed under the employment discrimination mandates of the ADA. Findings describe people with disabilities and show that the Equal Employment Opportunity Commission's mediation program has increased settlements.
- Simplified and reorganized demographic data resources on employment, income, and poverty status of persons with disabilities. The online statistical resource, provided by Cornell University, is readily available to all in need of accurate disability statistics.
- Developed, at the University of Montana RRTC on rural disability, an improved measures and methods for assessing transportation, housing, employment, independent living services, health and wellness facilities, and community planning activities for people with disabilities in rural communities.
- Developed, at the University of Missouri, a model designed to ensure students with disabilities access to accommodations, mentoring, and information technology upon graduation.

Research on new and improved interventions, products, devices, and environmental adaptations for employment has:

- Demonstrated an input-intervention-outcome model for vocational rehabilitation services to deaf or hard of hearing consumers under the Workforce Investment Act (WIA) and the Rehabilitation Act.
- Investigated State employment services to people with disabilities to improve outcomes within welfare-to-work initiatives.
- Developed employment-related assistance services for individuals who are blind or severely visually impaired receiving services under the WIA.
- Investigated incentives, disability management, return-to-work, and telecommuting to improve employment outcomes and benefit employers.
- Developed approaches to help ensure that students with disabilities access technology resources, mentoring, and advanced IT in school and obtain related jobs upon graduation.
- Developed a prototype computer software program that provides the opportunity for job seekers who are deaf or hard-of-hearing to practice interviewing skills for employment.

Research Agenda

Within the domain of employment research, NIDRR will focus on increasing useful theories, measures, and methods to improve the scientific validity of employment research and on research to increase the availability of validated interventions, products, devices, and environmental adaptations.

Theories, Measures and Methods

Tested theories, measures, and methods to increase the scientific validity of employment research will enable end users to sustain quality employment for individuals with disabilities by improving:

- Understanding of employment trends for individuals with disabilities in relation to macroeconomic, legislative and societal changes, and demographic trends.
- Services and policies that impact work-related needs of individuals with disabilities and employers.
- Tools that measure multiple dimensions of employment for individuals with disabilities and the employment industry.

Valid theories for investigating employment phenomena and measures of the specific needs of subpopulations should enable researchers to map pathways from knowledge advances to target systems, and to identify the determinants of labor force participation, lost earnings, and recovery of employment.

Interventions, Products, Devices, and Environmental Adaptations

Research on interventions, products, devices, and environmental adaptations will serve to develop strategies that will:

- Successfully support transitions into employment and within the employment setting across the lifespan.
- Effectively increase access to and quality of vocational rehabilitation and individualized employment services, workplace supports, and job accommodations; successfully reduce barriers to hiring while enhancing work skills, job acquisition, job retention, and career advancement.
- Effectively contribute to program eligibility determinations, design of program components, and assessment of program outcomes.
- Effectively address the employment needs of individuals with intellectual or cognitive disabilities, mental illness or psychiatric disabilities, and episodic disabilities of all etiologies. These interventions must be sensitive to changing demographics.
- Respond to employment needs in high growth and rapidly changing industries.

• Improve work opportunities for individuals with disabilities from diverse interest, knowledge, language, and cultural backgrounds.

• Assist employers and policymakers to provide employment opportunities for people with disabilities.

• Create tools that match the needs of employers and individuals with disabilities for workplace accommodations.

• Improve employment outcomes for specific disability populations, including individuals with behavioral, physical, psychiatric, cognitive, and sensory disabilities.

Thus, NIDRR's research agenda in the area of employment is designed to:

• Strengthen the scientific basis of disability and rehabilitation-related research and practice by increasing the availability of validated theories, measures, and methods to improve measurement, data sources and estimates, and enhance identification, evaluation and prediction of the factors that facilitate successful labor force participation and work-related transitions across the life span.

• Strengthen the scientific basis of disability-related employment policy, practice, and research by providing evidence-based information and analyses that improve understanding of employment trends; specific job industries and changes within industries; individual labor force participation and school-to-work transitions; and that enhance knowledge of the rapidly changing societal developments that affect employment opportunities and outcomes across the life span.

B. Participation and Community Living

Overview

Like employment, participation and community living are at the heart of NIDRR's mission to develop knowledge that will ''improve substantially the options for disabled individuals to perform activities in the community, and the capacity of society to provide full opportunities and appropriate supports for its disabled citizens.'' In this Plan chapter, NIDRR will use the term ''participation'' to represent all three concepts of participation, community integration, and independent living (IL). The central question of the *Olmstead* decision is whether people with disabilities are physically living in the community. This enriched term ''participation'' will help NIDRR and the applied rehabilitation research community to focus on the extent to which people with disabilities are participating in the community in a manner that is meaningful to them.

NIDRR's focus on participation follows the stated purpose of IL programs under the Act. That purpose is ''to promote a philosophy of independent living, including a philosophy of consumer control, peer support, self-help, self-determination, equal access, and individual and system advocacy, in order to maximize the leadership, empowerment, independence and productivity of individuals with disabilities, and the integration and full inclusion of individuals with disabilities into the mainstream of American society.'' People with physical disabilities historically have employed the term ''independent living'' to indicate a philosophy, movement and service system that work toward a goal of meaningful participation in society. Similarly, the term ''community integration'' has been used to represent a concept, movement, and service delivery system that encompasses the ultimate goal of full societal participation of people with cognitive or psychiatric disabilities. Thus, incorporation of the IL and community integration terms within the term of participation will allow NIDRR to focus on the ultimate outcome sought by all people with disabilities. This chapter mainly addresses general research needs related to achieving societal participation for people with all types of disabilities. Where necessary, the Plan presents research topics that are specific to promoting participation among particular subpopulations of people with disabilities.

Research enhances the scientific basis for a wide range of policies and practices aimed at promoting the societal participation of individuals with disabilities. Research may include evaluation of specific participation-promoting programs, interventions and products, as well as development of methods, measures and theories to enhance the scientific rigor of these evaluations. NIDRR sponsors research to improve knowledge of individual- and societal-level factors that may serve as barriers to, or facilitators of, participation among all people with disabilities.

The Context for Research on Participation and Community Living

The current policy context for research that promotes full participation of people with disabilities is supportive and encouraging. There are two major components of this context. The first is the *Olmstead* decision, which upholds the integration mandate from Title II of the ADA, requiring public entities to provide services ''in the most integrated setting appropriate to the needs of qualified individuals with disabilities.'' Just as encouraging is the 2003 report of the President's New Freedom Commission on Mental Health, which makes recommendations that would enable adults with serious mental illnesses and children with serious emotional disturbance to live, work, learn, and participate fully in their communities.

The *Olmstead* decision holds that States must place people with disabilities in community settings rather than institutions whenever appropriate. This decision and subsequent efforts by States to abide by it have spotlighted the many barriers to meaningful community participation of people with disabilities. These barriers include, but are not limited to: (1) A shortage of affordable and accessible housing in the community, (2) a shortage of personnel to serve as personal assistants in the community, (3) a lack of accessible and appropriate community-based health and dental care, (4) a lack of accessible transportation, (5) problems and gaps in the mental health service delivery system, and (6) a persistent bias in Medicaid-funded long-term care programs that channels resources away from communities and into institutions. Many States are models of effective planning for *Olmstead* implementation. Full implementation of these thoughtful plans could lead to enhanced integration and participation of people with disabilities.

Future research on community integration, IL and participation of people with disabilities also will be influenced by the 2003 report of the President's New Freedom Commission on Mental Health, ''Achieving the Promise: Transforming Mental Health Care in America.'' The report provides six major goals for our nation's mental health efforts that are directly related to the participation of individuals with psychiatric disabilities. These goals are (1) Americans understand that mental health is essential to overall health, (2) mental healthcare is consumer and family driven, (3) disparities in mental health services are eliminated, (4) early mental health screening, assessment, and referral to services are common, (5) excellent mental healthcare is delivered and research is accelerated, and (6) technology is used to access mental healthcare and information.

The above-mentioned report shows a mental health system in disarray. For children and adults with psychiatric disabilities, the service delivery systems, policies, finances, and

treatment options are fragmented, confusing, and inadequate. Unnecessary institutionalization remains a problem, as do the practices of seclusion, restraint, and forced treatment. Stigma remains a major obstacle to treatment, and suicide continues to be a major public health problem. People with psychiatric disabilities are overrepresented in the homeless population and in the juvenile and criminal justice systems. Existing policies frequently force parents of children with psychiatric disabilities to relinquish custody to ensure that their children receive adequate mental healthcare.

To respond to the challenges described in the preceding paragraphs, NIDRR research in the area of participation develops and evaluates strategies for services, interventions, products, and modifications to the built and social environment that would allow individuals with all types of disabilities to live and participate in their communities. These services, interventions, products, and environmental adaptations differ for specific subgroups of people with disabilities. NIDRR-funded researchers are among the vanguard of measurement experts seeking to develop new and improved theories and measures of participation and community living so that the impact of these specific strategies and interventions can be more accurately determined.

Accomplishments in Participation and Community Living Research

NIDRR-sponsored research has been associated with a number of significant outcomes related to the participation of people with disabilities. These accomplishments are categorized as related to (1) theories, measures, and methods or (2) interventions, products and devices, and environmental adaptations.

Research on Theories, Measures, and Methods Has

- Addressed the full range of independent living issues, from the development of conceptual frameworks to policy research, to research addressing the management needs of centers for independent living (CILs).
- Led to the acceptance of the concept of consumer-direction and control among a broad population of people with disabilities. This concept originated among working-age individuals with physical disabilities, but more recently has been accepted by leadership in both the aging and developmental disability communities.
- Led to the development of new measures of participation and community integration among people with disabilities. Measures developed in the past include the Community Integration Questionnaire and the Craig Handicap Assessment and Reporting Technique (CHART).

Research on Interventions, Products, Devices, and Environmental Adaptations has:

- Led to the development and expansion of a range of services and programs designed to directly support individuals with disabilities in their communities.
- Helped determine that, from the consumer perspective, consumer-directed PAS are delivered in a manner that is no less safe than traditional agency-directed services.
- Increased the knowledge base about PAS programs and best practices among a wide variety of stakeholders, including local, State and Federal-level policymakers, service-providers, and disability advocates.
- Clarified the extent of PAS use, as well as the unmet need for PAS in the United States.
- Led to advances in treatment options and community-based supports for individuals with mental illness and psychiatric disability. These advances include recovery-oriented services and practices; psychiatric rehabilitation; peer supports and other natural supports in community and employment settings; supported education services in higher education, employment services that integrate mental health and vocational rehabilitation services; psychosocial rehabilitation; services that are provided by mental health consumers, and systems of care and wraparound services in children's mental health.
- Led the Alzheimer's Association and the Arc of the United States to use recommendations derived from NIDRR-funded research to promote constructive approaches to community care for people with intellectual and developmental disabilities affected by dementia.
- Promoted participation by creating the concept of universal design, which holds that all products and environments can be created for use by all people, regardless of their physical or mental abilities.
- Promoted participation by applying universal design principles to create accessible voting kiosks, ATMs, computers, and other mass-market products that allow people with disabilities to participate in their communities.
- Promoted participation through the development of disability-accessibility guidelines for the World Wide Web.
- Promoted participation through design and application of a wide variety of technological products that allow easier navigation of indoor and outdoor environments by people with sensory disabilities. For example, ''Talking Signs®'' technology allows individuals with low vision to travel more independently in all environments. This remote infrared technology has been deployed in numerous cities throughout the U.S., Europe, and Asia. Other NIDRR-sponsored research-based advances include wayfinding applications, combinations of global positioning technologies with Braille capabilities, audio descriptions in theaters, and closed-captioning in public spaces.

Research Agenda

The expected outcome of NIDRR's research efforts, at the individual level, is the development of new knowledge that can be used to increase the capacity of people with disabilities to plan and direct their own lives, choosing among options for maintaining the levels of independence and social involvement that they desire.

The expected outcome of NIDRR's research efforts, at the systems level, is the production of knowledge that can be used to improve options and services for achieving independence and social involvement, and the supports necessary to realize those options.

Theories, Measures, and Methods

Effective theories, measures and methods to achieve optimal levels of participation among individuals with disabilities are important because they:

- Improve understanding of the wide range of activities that may be associated with enhanced participation among people with disabilities.
- Improve tools that measure multiple dimensions of participation among individuals with disabilities.
- Improve the ability to scientifically identify and evaluate effective services and policies that impact the participation levels of individuals with disabilities.

By bolstering understanding of the complex meaning of participation and employing new and improved measures that adequately reflect this concept, NIDRR will build a stronger foundation of research-based knowledge upon which participation-focused services and policies can be based.

NIDRR will continue to promote research that develops and strengthens theories for understanding and

promoting community integration, IL and participation, as well as new methods for measuring these ultimate outcomes. NIDRR will continue to lead the way in the development of participation and community living measures. Current measures of participation and community integration largely have been developed by researchers working in the context of medical rehabilitation, and have been applied to populations of people with physical disabilities. Measurement of participation and community living among people with intellectual or cognitive disabilities requires emphasis on the development and testing of measures designed to be applied to populations of people with these types of disabilities. NIDRR will sponsor research to construct reliable and valid theories and measures for participation and community integration of individuals with intellectual, cognitive, or psychiatric disabilities. These advances will provide a foundation for high quality research on these issues.

NIDRR also plans to pursue research to develop advanced theories of disability and participation to capture the complex interaction of environmental and individual factors. That will require improvements in the ability to measure the influence of environmental factors on participation levels of people with disabilities. An increased understanding of the environment's role will sharpen understanding of the specific physical or social barriers to be addressed, and the facilitators on which to build enhanced participation.

Interventions, Products, Devices and Environmental Adaptations

New and improved interventions, products, devices, and environmental adaptations are important because they:

- Improve participation outcomes for all individuals with disabilities. Improved participation outcomes would include quantitative increases in the number of individuals with disabilities living and interacting in the community, as well as qualitative improvements in the nature and quality of that social involvement.
- Provide access to individualized services and supports to promote participation among all people with disabilities.
- Apply conceptually sound theories of societal participation for specific subgroups of people with disabilities.
- Can be tailored to the specific needs of individuals with physical, sensory, cognitive, or psychiatric disabilities to reduce environmental barriers to participation.

NIDRR is interested in promoting rigorous research based on well-developed theories, using validated measures and appropriate methods that examine the efficacy and effectiveness of interventions and programs designed to promote community integration. These interventions may include Federal, State, and local programs, or improved environmental adaptations or devices that enhance the ability of individuals to live independently in the community. NIDRR is especially interested in sponsoring research on programs and interventions that will (1) Promote participation in educational opportunities over the life span, (2) enhance access to recreation and transportation, (3) enhance access to PAS and direct-care providers, (4) promote the availability of accessible, affordable housing for people with disabilities, (5) enhance asset-accumulation practices among people with disabilities, and (6) enhance participation and integration of parents with disabilities, and families with children with disabilities.

NIDRR intends to place particular emphasis on research related to direct supports and services that will enable individuals with disabilities to have options for participation and to implement their choices in their environments. The aim of this research would be to develop best practices for providing supports for people with disabilities living in the community.

NIDRR also will sponsor research to determine the ways in which people with disabilities can use applications of universal design to reach their participation goals. This research will illuminate the barriers to, and facilitators of product utilization, and will guide future dissemination and marketing of state-of-the-art technologies. Thus NIDRR's research agenda in the domain of participation and community living is designed to:

- Strengthen the scientific basis of policies and practices aimed at enhancing participation among people with disabilities by providing information and analyses that improve understanding of participation levels among individuals with disabilities and the multiple barriers to and facilitators of their participation.
- Strengthen participation-related research and practice by increasing the availability of validated theories, measures, and methods. These theories, measures, and methods will improve data sources and estimates, and will enable better identification, evaluation, and prediction of the factors that facilitate or impede participation and community living. These improvements will enhance the credibility of research and thus increase the utilization of research findings.

C. Health and Function

Overview

Maximizing health and function among people with disabilities is critical to the achievement of NIDRR's mission and the associated higher-order goals of employment and community participation. Functional ability reflects the complex interaction between individuals and the environments in which they live. Accordingly, NIDRR conceptualizes and examines issues of health and function at the systems and the individual levels.

At the systems level, NIDRR-supported research focuses on the structure, organization, and delivery of healthcare and medical rehabilitation services. Individual level research focuses on the development and testing of new interventions that improve functional and health outcomes for individuals. At the systems level, NIDRR also studies access to healthcare and rehabilitative medicine, and the complex delivery systems used for those services.

In conceptualizing health and function research to improve the lives of individuals with disabilities, NIDRR posits a growing need for research on medical rehabilitation interventions to improve function and for health status research to improve overall health and wellness of people with disabilities.

The Context for Research on Health and Function

NIDRR sponsors research to improve the health and function of individuals with disabilities, as well as to understand and improve the system of healthcare services delivery, including the delivery of medical rehabilitation services.

Individual Level: Ongoing research and clinical efforts have produced a wide variety of programs, interventions, and products aimed at enhancing the health and function of individuals with disabilities. The scope of research in medical rehabilitation is as broad as the numerous conditions that result in disablement, and may focus on the onset of new conditions, the exacerbation of existing conditions, or the development of coexisting conditions. Accordingly, there are important opportunities for advancements in a range of body systems.

Over the course of the last several decades, neurobiologists have been advancing the understanding of the

central nervous system and the complex mechanisms by which cells and neurons are able to compensate for and potentially heal injuries and lesions. NIDRR is well positioned to capitalize on these basic science findings by funding research to develop rehabilitative interventions that are based on the expanding knowledge of neurobiological processes. There is continuous research on prevention of secondary conditions among people with disabilities. Conditions such as pain, muscle weakness, obesity, cardiovascular de-conditioning, and depression are especially prevalent for persons with disabilities, to a great extent because of their sedentary lifestyles. Studies have indicated that persons with disability are more susceptible to earlier age-related functional declines when compared to their non-disabled counterparts.

NIDRR will continue to sponsor research that examines the impact of exercise and activity on the functional independence and overall health status of individuals with both newly diagnosed and long-term disabling conditions. Related to this research on the impact of physical activity on the health and function of people with disabilities are recent findings on the impact of complementary and alternative therapies. Interventions such as yoga, acupuncture, martial arts, and reflexology have enhanced effects on rehabilitation outcomes when coupled with conventional rehabilitation treatment modalities.

There is also a growing body of research on the use of pharmacological interventions to improve health and functional outcomes. There are several examples in treating symptoms of major brain injuries, including new uses for existing drugs that may be effective in treating agitation and fatigue and addressing states of minimal consciousness. New drugs now in testing may show promise for managing spasticity in spinal cord injury (SCI) and multiple sclerosis (MS) and pain management in the arthritis population. Research in medical rehabilitation must remain attuned to pharmacological advances and be prepared to examine their use with rehabilitative interventions.

Research on health and function also involves research on new technologies that improve diagnosis and measurement of disabling conditions, as well as devices to support enhanced function. Under investigation is the extent to which home-based telerehabilitation interventions meet current clinical standards. Researchers are looking at multimedia and virtual reality technologies to minimize pain in burn treatment and to provide cognitive retraining for individuals after traumatic brain injury (TBI) or stroke. Examples of other emerging technological interventions aimed at enhancing individual function include microelectronic connections between the central nervous system and muscle groups affected by injury or disease, and artificial intelligence to enable walkers and wheelchairs to navigate varied terrains.

All of these research-based innovations that have developed over the course of the last decade provide the context and foundation for continuing advances in theories, interventions, and products that will help promote the health, wellness, and community participation of people with disabilities.

Systems Level: The complex, ever-evolving healthcare delivery system in the U.S. plays a major role in the promotion and maintenance of health by all people, including people with disabilities. People with disabilities should have access to an integrated continuum of healthcare services, including primary care and health maintenance services, specialty care, medical rehabilitation, long-term care, and health promotion programs.

While health services researchers are increasingly attuned to racial and ethnic disparities in healthcare, less attention and fewer resources are devoted to disability-related disparities and the innovations in policy and practice that might reduce them. Physically inaccessible offices and equipment, abbreviated appointments, and physician attitudes are significant barriers to the use of appropriate preventive services by people with disabilities. The relative lack of access to healthcare services by people with disabilities is likely to become an increasingly serious problem as the full implementation of the *Olmstead* decision shifts some individuals out of institution-based healthcare into mainstream health services.

People with a range of disabilities disproportionately experience depression and other mental health conditions, and there is a substantial amount of unmet need for mental health services. The NFI strongly promotes improvements to the Nation's mental healthcare delivery system for individuals with severe mental illness. People with all different types of disabilities—not just psychiatric disabilities—may benefit from increased access to mental health services.

The population of people with disabilities is heterogeneous in terms of type of disabling condition, sociodemographic characteristics, and specific healthcare needs. Researchers must make concerted efforts to sample and collect data from the wide diversity of people with disabilities, including racial and ethnic minorities and people in low-income categories. The healthcare experiences of these doubly underserved populations are different than the experiences of white, middle-income people with disabilities.

The relatively small number of studies focusing on healthcare delivery for people with specific types of disability, sociodemographic backgrounds, and healthcare coverage, makes it difficult to piece together a coherent picture of the impact of the healthcare delivery system on health and wellness of people with disabilities. Given the relative lack of research resources in this important area, researchers must work together to synthesize this work to create a coherent body of knowledge that delineates specific practices and policies that are either beneficial or harmful to the health and wellness of people with disabilities. In addition to this synthesis of studies into a coherent mosaic, there is a need for large-sample, longitudinal research projects to determine the impact of healthcare systems on the health and wellness of the diverse population with disabilities. This endeavor will require increased inter-agency cooperation on health services research for people with disabilities.

Accurately and appropriately measuring the health status of individuals with disabilities is critical to our understanding of the impact of the healthcare delivery system on their health and wellness. One barrier to accurate measurement of the health status of individuals with disabilities is the tendency of widely used measures to conflate functional ability with health. Functional capacity and health are distinct concepts; disability is not the same as poor health. NIDRR-funded research has demonstrated that people with lower levels of functional capacity are, in the aggregate, less likely to report positive levels of health. Despite this association, a substantial number of individuals with low functional levels report that their health is good or excellent. Researchers need measures of health that do not rely on estimates of functional capacity. The SF–36, developed by RAND to assess outcomes of medical care, is the most widely used health status measure in the world. Its holistic conceptualization of health is generally appropriate, but it is widely criticized by disability researchers for its tendency to conflate functional ability with health status.

Over the course of the last two decades, NIDRR's investment has been instrumental to the development of appropriate and effective measures of health and function for people with disabilities. NIDRR-funded research led directly to the development of the current standard for measuring functional independence in rehabilitation settings, the Functional Independence Measure (FIM).

There has been considerable discussion about the problems of classifying specific interventions in medical rehabilitation, which is characterized by its overlapping teamwork approach practiced by physical therapists, occupational therapists, and other allied health professionals. NIDRR is funding groundbreaking research in this area. However, the lack of consensus on how to define and measure the multitude of interventions that take place within the ''black box'' of rehabilitation is a persistent barrier to a more rigorous and targeted evaluation of rehabilitation outcomes. The robustness of outcomes research findings requires that the intervention be delineated specifically so that it can be replicated or adapted by researchers or practitioners.

Accomplishments in Health and Function Research

Research on theories, measures, and methods has advanced the field of medical rehabilitation at both the individual and systems levels. At the level of the individual, NIDRR has supported research on theories, measures, and methods that has:

- Supported the development of the Functional Independence Measure (FIM), the most commonly used functional assessment tool in rehabilitation medicine.
- Promoted the conceptual analysis of disability and functional outcomes as the interaction of the individual with his/her environment. NIDRR-funded researchers developed, tested, and implemented the use of the Craig Hospital Inventory of Environmental Factors (CHIEF) instrument to quantify a variety of environmental factors that promote or hinder functional independence and community participation.
- Developed computer-assisted methods for efficiently assessing health and functional status outcomes for individuals with disabilities.
- Developed, tested, and implemented widespread use of instruments such as the Craig Handicap Assessment Research Tool (CHART) and the Community Integration Questionnaire (CIQ) to measure community participation following medical rehabilitation.
- Supported development of quality of life measurements that take a person-centered perspective in evaluating long-term outcomes of disability.
- Developed instruments such as the Walking in Spinal Cord Injury (WISCI) to measure specific functional activities and mobility after SCI. This measure has been adopted by the European Clinical Trials Group in SCI.
- Developed information resources such as the Center for Outcomes Measurement in Brain Injury (COMBI), which provides detailed reliability, validity, and instructions for using the major outcomes assessment tools in TBI.

NIDRR research on theories, measures, and methods also has made many advances that inform the future agenda at the systems level:

- Documented that individuals with disabilities use a disproportionate amount of services from across the healthcare spectrum and incur higher per capita medical expenditures than do people without disabilities.
- Documented a persistent lack of consistent access to a broad spectrum of healthcare services by people with disabilities, including some cancer screenings, primary care, specialty care, and medical rehabilitation services.
- Described and documented a number of systematic Barriers to healthcare for people with disabilities, as well as the consequences of those barriers for individuals' health, wellness, functional ability, and social participation.
- Determined that there are a number of healthcare quality factors that are unique to the population with disabilities, and that these factors are not reflected in population-based health care quality tools that are in current use.
- Improved the ability of State service agencies and education departments to meet the needs of children with mental health disorders by influencing changes in policy and practice regarding parent participation, and improving State financing mechanisms for children's mental health.
- Developed the conceptual, empirical, and technological base of the field of psychiatric rehabilitation and promoted widespread adoption of psychiatric recovery-oriented systems, services, and practices.
- Promoted access to mental health services, including alcohol and drug treatment services, for adults and children with physical and/or psychiatric disabilities.
- Supported the ongoing translation of the ICF classification system into the next generation of post-acute measures of function, performance of activities, and participation.
- Supported applications of state-of-the-art statistical modeling techniques and computer adapted testing methods for bringing increased efficiency and accuracy to the process of outcomes data collection.

Achievements in research on interventions, products, devices, and environmental adaptations have created a basis at the individual level from which to direct future research. This research has:

- Established and maintained model systems programs in SCI, TBI and burn rehabilitation. These programs have collected longitudinal data to characterize the population and outcomes of individuals with these injuries as well as developed new evidence-based interventions to improve long-term functional, vocational, cognitive, and quality of life outcomes.
- Developed specific exercise protocols designed to strengthen and enhance flexibility among individuals with severe arthritis. These protocols have been adopted for use in both the clinic and home-based setting, but require further evaluation.
- Led to the development of novel methods of treating a number of secondary conditions associated with SCI, including urinary tract infections, dyslipidemia, cardiovascular disease, and pressure ulcers.
- Developed new computerized technology for the proper alignment of leg prostheses, to improve the mobility of individuals with foot amputations.
- Developed and tested therapeutic interventions focused on enhancing functional capacity following stroke. Further, NIDRR-funded stroke rehabilitation researchers have systematically documented the natural history of stroke impairment, short- and long-term disability, and the implications of these findings for rehabilitation practice and quality of life after stroke.
- Developed and disseminated an effective health behavior education curriculum that is being used by agencies in the U.S. and internationally to improve the physical activity and recreational skills of people with intellectual and developmental disabilities.
- Developed the conceptual, empirical, and technological base of the field of psychiatric rehabilitation, and promoted widespread adoption of psychiatric recovery oriented systems, services, and practices, including alternative health practices.

• Identified best practices in comprehensive burn care, focusing on early intervention of rehabilitation to improve psychological well-being, functional status, and employment status of burn survivors.

• Generated descriptive findings about the nature and etiology of a wide variety of disabling conditions that have set the stage for testing innovative interventions and rehabilitative treatments.

• Documented the elevated propensity for persons aging with disability to encounter issues such as onset of new chronic conditions, decline of functional ability as a result of changed health status, diminished psychological well-being and quality of life, and diminished family and social supports.

• Described and documented the dynamic psychosocial factors that affect community integration and participation of people with multiple sclerosis.

• Developed numerous assistive devices to improve the health and functional abilities of individuals with disabilities. Examples of these devices include prostheses, orthoses, communication aids, and mobility aids.

• Supported development of repetitive motion techniques on the treadmill, to improve stability and mobility of individuals with SCI and other mobility impairments.

• Developed and implemented telehealth and telerehabilitation initiatives to expand the ability of the organized healthcare and rehabilitation systems to diagnose, treat, and monitor ongoing needs of individuals with disabilities.

• Developed technological advances such as pressure garment materials to prevent contractures among burn survivors.

• Examined the use of portable hand-held devices to support cognitive functioning for individuals with TBI and other neurological conditions.

• Developed a product to support gait recovery in individuals with stroke that has been commercialized and is now sold in the U.S. and Japan.

Research on interventions, products, devices, and environmental adaptations at the systems level has:

• Demonstrated that a substantial number of people with disabilities who need medical rehabilitation services and/or assistive equipment have difficulty accessing them, regardless of whether they are covered by managed care or fee-for-service health plans. This body of research consistently indicates that access difficulties occur most frequently among those reporting the most severe disabilities, those in the poorest health, and those with the fewest monetary resources.

• Demonstrated that a substantial percentage of individuals with moderate to severe disabilities do not have systematic access to preventive medicine and screening services.

• Led to the adoption of a new policy statement by the Medical Advisory Board of the National Multiple Sclerosis (MS) Society, which recommends rehabilitation as a necessary component of quality healthcare for people with MS at all stages of the disease.

• Led to the adoption of the ''Living Well with a Disability'' health education curriculum by a large health plan in California that serves 9,500 individuals with disabilities.

• Increased the interest and commitment among some State Departments of Mental Health to adopt recovery-oriented rehabilitation systems for persons with mental illness.

Research Agenda

At the individual level, NIDRR will fund research that supports the development and evaluation of new interventions, products, devices, and environmental adaptations aimed at improving the health status and functional abilities of people with a wide range of disabling conditions. Many of these new interventions will address the needs of people who are aging with disability, with particular emphasis on minimizing secondary conditions. To aid in the evaluation of these new interventions, NIDRR also will fund research that leads to the development of the next generation of valid and reliable measures of health and functional status among people with disabilities.

These new measures will be applicable in a wide variety of clinical and community settings, and will incorporate consumer perspectives in order to assess the extent to which health status and functional capacity relate to the ability to perform valued activities in the community. NIDRR will conduct research that identifies effective methods for translating data from these new outcomes measures into information that can be used to inform decisions made by consumers, payers, provider organizations, and clinicians.

At the systems level, NIDRR will fund research that will generate new knowledge about the systematic causes and consequences of substandard access to rehabilitation, healthcare, and mental healthcare services for people with a wide range of disabling conditions. This research will identify and evaluate the effectiveness of specific service delivery approaches and reimbursement models aimed at minimizing physical, social, and economic barriers to the full spectrum of health, mental health, and rehabilitation services that are needed by people with disabilities.

Thus, NIDRR's research agenda in the area of health and function is designed to:

• Increase the number of validated new or improved methods for assessing function and health status.

• Increase the number of interventions, products, and devices demonstrated to be efficacious in improving health and function outcomes in targeted disability populations.

• Increase understanding of the underlying structures and processes that facilitate or impede equitable access to rehabilitation and physical and mental healthcare by people with disabilities.

D. Technology for Access and Function

Overview

Everywhere, Americans are using technology to make their lives easier, more enjoyable, and more productive. Americans with disabilities, however, depend upon technology for much more than convenience or a competitive edge. Technology plays a vital role in the lives of millions of Americans with disabilities by helping them to overcome physical, cognitive, and sensory functional deficits, thus enabling them to lead more independent, secure, and productive lives. In the past, persons with significant disabling conditions often were considered to lack potential for habilitation or rehabilitation and were subsequently consigned to institutions or segregated facilities such as nursing homes, denying them the opportunity to live full and meaningful lives. In 2004, barely three decades after the birth of rehabilitation engineering, individuals with significant disabilities are able to live, often independently, in their own homes, and to participate in society in meaningful and productive ways.

Advances in science and engineering have had an extraordinary impact on all areas of disability and rehabilitation. Research has emerged from a period focused primarily on impairment to a period that focuses on a broad range of issues of function and access. NIDRR's leadership in rehabilitation engineering and assistive technology development has played a major role in creating technology for use in rehabilitation services, for use by individuals with disabilities to conduct their daily lives, and to inform policy and adapt environments to meet the needs of persons with disabilities.

NIDRR's Logic Model depicts technology as encircling the goals of sustaining health and function, employment, and participation, because technology is a critical contributor to successful outcomes for persons with disabilities in all these areas. This section of the Plan discusses the societal and scientific contexts of disability technology research, and describes its applications at the individual and systems levels. At the individual level, the primary focus is on assistive technology devices; at the systems level, the areas emphasized include environmental adaptations and accessible IT. Also included are instruments for use in medical and rehabilitative interventions, such as tools for diagnoses, assessments, and therapeutic interventions.

The Context for Research on Technology for Access and Function

NIDRR is well positioned to continue its leadership in rehabilitation engineering and assistive technology research. NIDRR maintains an environment in which rehabilitation engineering and assistive technology research are parts of an institutionalized continuum that includes related medical, clinical, public policy, psychological, economic, vocational and social research. NIDRR continues to promote the value of rehabilitation engineering and assistive technology research while raising the national conscience about the value of research relating to people with disabilities.

Advances in basic biomedical science and technology have resulted in new opportunities to enhance the lives of people with disabilities. Recent advances in biomaterials research, composite technologies, information and telecommunication technologies, nanotechnologies, micro electro-mechanical systems (MEMS), sensor technologies, and the neurosciences provide a potential wealth of opportunities for individuals with disabilities and should be incorporated into research focused on disability and rehabilitation.

NIDRR supports technology-related research at both individual and systems levels. At the individual level, assistive technology is used to enhance the physical, sensory, and cognitive abilities of people with disabilities and to assist them to participate in and function more independently in the home, at work, in recreational settings, and at cultural and religious events. At the systems level, technology R&D activities are applied in ways that enhance community integration, independence, productivity, competitiveness, and equal opportunity by mitigating or eliminating barriers found in large social systems such as public transportation, telecommunications, IT, and the built environment.

Assistive technology often is described as either ''high tech'' or ''low tech''. High tech devices generally are complex and often expensive to produce and use, while low-tech devices often can be made at home or in a hobbyist's workshop, are simple to create and operate, and are usually less costly. One NIDRR researcher frequently states that what is needed is ''not high tech or low tech, but the right tech'' to meet the needs of a specific individual.

Most assistive technology for people with disabilities falls into the category of orphan technology because of the specialized nature, limited demand, and consequent limited markets. This translates into reduced economic rewards for manufacturers. Strategies to address the problem of small markets include universal design and capitalizing on the growing recognition that many improvements intended for people with disabilities serve similar functions for others. For example, closed captioning is useful to all in noisy environments like airports, and in improving English literacy; curb cuts improve access for people pushing baby carriages or luggage; and voice recognition technologies are used throughout the Nation's telecommunications systems.

Consumer participation in rehabilitation engineering and assistive technology research is vitally important. Without end-user input, products tend to be developed in a vacuum; invariably, such products miss critical elements of design that facilitate adoption and successful use by persons with disabilities. The incidence of abandonment of assistive devices has been distressingly high throughout the history of the field. There appears to be a variety of reasons for abandonment, including: Poor fitting; mismatch to the user's needs; inadequate training in use of the device; equipment failures; objection to size, appearance or cumbersomeness of the device; and individual or cultural beliefs and values. Inherent in poor design and mismatch, in particular, is the paucity of customer reference or consumer involvement at each level of product development. In order for products to gain widespread acceptance and adoption, there must be detailed and exacting analysis of user feedback at each stage of product evolution, especially during the earliest stages of development. To continue use of the device, the consumers must find that the functional gains brought by the device outweigh the various inconveniences.

In sum, the principal function of technology research is to support the end-user outcome of participation, including employment, community integration and independent living, and the maintenance of health and function.

Accomplishments in Technology for Access and Function Research

The outputs of recent NIDRR-supported research, along with recent advancements in the field of technology as a whole, serve to describe the state-of-the-science and to indicate the most promising areas for future NIDRR investments.

Universal design principles have been incorporated into IT systems to create accessible public information kiosks, electronic voting systems, ATMs, postal kiosks, and airport information systems. Universal design principles can be applied to the built environment, IT, telecommunications, transportation, and consumer products. These systems are basic to community integration, education, employment, health, and economic development. The application of universal design principles at each step of the R&D process would incorporate the widest range of performance on human engineering factors into technological systems. Universal design applications may result in the avoidance of costly retrofitting, a wider market base, and cost stability or reduction over time. NIDRR has taken a leadership role with regard to the development and promulgation of universal design principles that can be applied to the built environment, telecommunications, IT, transportation, consumer products, and the World Wide Web.

The IT revolution is fundamentally altering the way Americans work, purchase goods and services, communicate and play. Today, one can access information using any number of electronic devices and networks, including computers connected to ''plain old telephone lines'' (POTS), televisions connected to cable or digital satellite networks, cellular telephones, or wireless hand-held personal digital assistant devices. Unlike earlier information technologies (*i.e.*, print, radio, telephone, television and telefax), mobile communications networks, the Internet, and the World Wide Web did not seep into our daily lives gradually—rather, they exploded onto the scene. While the economic impact of this transformation has not been fully evaluated at either the individual or systems level, it is significant. The

ubiquitous nature of IT brings with it a host of opportunities as well as challenges—especially for people with disabilities.

NIDRR, through its network of grantees, has provided critical expertise and leadership for policy, regulatory and standards development related to wheelchairs, wheelchair restraint systems, and wheelchair seating systems. Specifically, NIDRR-sponsored researchers have created standards for wheelchair safety in motor vehicles, for docking devices for public transit, and for measuring and testing wheelchair seating component strength, seating posture, and cushion design. Other NIDRR-sponsored research resulted in the development of a manual entitled ''Landmarking Manual for 3–D Anthropometry'' to enhance and expand a prototype database of individuals who use both powered and manual wheelchairs.

NIDRR researchers identified problems with reproducibility of the standard measure (ANSI C.63.19) used by the Federal Communications Commission (FCC) as a basis for its rule on wireless phones and hearing aids, and developed consumer guidance for hearing aid wearers. NIDRR-sponsored research resulted in a consumer-tested tool for evaluation of TTY error rates over digital wireless phones. This tool has been transferred to industry, where it is now the industry standard measurement tool. The first web guidelines (Mosaic Access Guidelines, Unified HTML Accessibility Guidelines) were developed and adopted by the World Wide Web Consortium (W3C) as the starting point for their Web Content Accessibility Guidelines work. Representatives from several RERCs have been working with the International Committee for Information Technology Standards (INCITS) on the development of the V2 interoperability standards for augmentative and alternative communication, assistive technology, and IT.

Related to technology for hearing, NIDRR researchers developed instrumentation for the objective measurement of certain types of tinnitus. The rate of growth of evoked otoacoustic emissions with input signal level is abnormal in the frequency region of the tinnitus. Differences in the growth functions provide a means for identifying and measuring different forms of tinnitus. The instrument can be used to obtain objective measurements of tinnitus generated in the auditory periphery.

NIDRR's technology research is well situated to contribute to the realization of goals in the three outcome areas. Research on technology to support employment has led to the creation of a system for applying ergonomic technologies to accommodate disabled and elderly workers, developed tools for evaluating workers and jobs, and developed ergonomic solutions for disabled workers.

Research on technology to support health and function led to a simple yet highly functional prosthetic hand for children, and a novel transtibial prosthetic socket fabrication technology that greatly reduces the time and money needed for manufacture of prostheses. Other research has produced novel phone features such as ''Touch One to Call'' and ''Flip to Call'', which allow individuals who have significant cognitive impairments to use mainstream phones; an instrument for cost-effective early detection of hearing loss based on evoked otoacoustic emissions in the ear canal; and a technique for in situ measurements of hearing aid distortion, internal noise and other forms of interference in a hearing aid.

Research on technology to support participation and community living resulted in the design of an affordable universally designed kitchen, an adjustable height bathroom vanity, universally accessible laboratory furniture, and an easy to use screen door handle; and also created the first cross-disability accessible building entry system. Implemented first in public housing in San Francisco, that system allows access to the building directory and entrance security by individuals with low vision, blindness, physical disabilities, hearing impairments, deafness, and reading disabilities.

Research Agenda

NIDRR will continue to further the development and application of universal design principles to promote the full participation of people with disabilities in mainstream society. As the American population ages and the associated prevalence of disability increases over the course of the next 20 years, the importance and visibility of universal design applications will be greatly enhanced. These applications will include universally designed homes, buildings, vehicles, communication devices, media interfaces, entertainment venues, and other advances related to all aspects of life. These products and environmental adaptations will be universally designed for use by people of all ability levels, so that people can continue to lead active lives in their communities following the occurrence of trauma or age-related disabilities.

NIDRR will sponsor research to improve and build upon disability-specific products and environmental adaptations that have been developed to enhance participation and community integration. That will include the improvement of current augmentative communication technology so that it is smaller, easier to use, and provides a more life-like human voice for its users.

NIDRR research will address the principal function of technology—to support the end user outcome of participation. This requires research on techniques to enhance use and reduce abandonment by emphasizing consumer investment at each level of product development, including studies that illuminate potential population-specific factors (*e.g.*, behavioral patterns, cultural and societal values, or other variables). Because most assistive technology for disabled individuals falls into the category of orphan technology and is of a specialized nature, researchers often do not consider this cost-effective product development and employers sometimes do not consider this as a cost-effective mechanism for retaining injured workers or accommodating potential employees.

NIDRR will sponsor research that builds upon an understanding of the impact of economic factors on technology development, production, availability, and use, including studies that enhance understanding of the determinants of technology development and transfer, and use within specific industries or community environments. All of these factors must be considered within the realm of technology R&D, and in some instances across other areas of the NIDRR research agenda. Increasingly R&D researchers will be required to pay attention to environmental issues, societal factors, and cultural norms during the research and product development process, particularly in an environment where globalization influences outcomes for the technology market and changing demographics dictate technology needs. NIDRR intends to benefit from this international research agenda by providing the opportunity for researchers around the world to collaborate on product development and to examine technology needs through the lens of the international community. This creates a critical mass with related scientific expertise, leading to possibilities for new discoveries and information that otherwise would not benefit people with disabilities in this Nation.

NIDRR's research agenda in the area of technology for access and function is designed to:

• Strengthen the science basis of rehabilitation engineering and assistive technology through the development of theories, validated measures, and appropriate research methods for the identification and solution of problems to be addressed through technology.

• Increase the number and availability of empirically validated products, devices, or environmental adaptations that promote increased mobility, interactive control and manipulation of relevant features of the environment as well as access to information and technological communications systems by people with disabilities to promote independence in the home, community, and workplace.

• Increase the number of empirically based standards for products and devices and the built environment to ensure safety, accessibility, and usability by and for people with disabilities.

E. Disability Demographics

Overview

In carrying out its statutory mandate to work with other Federal agencies to produce demographic and statistical data describing the population of Americans with disabilities, NIDRR has continued to support important research in disability demographics. Good demographic data are a critical component of NIDRR's broader mission of supporting research that contributes to improvements in the lives of people with disabilities.

Demographic data contribute to NIDRR's mission by helping to:

• Allocate NIDRR resources among competing topical areas.

• Inform policy within NIDRR and within the Federal government as a whole.

• Identify potential changes in the characteristics and needs of the disabled population.

• Understand changes over time in disablement.

• Inform service delivery.

• Plan research to address current and emerging needs.

• Inform consumers and their families and advocates.

NIDRR researchers strive to understand the processes by which individuals vary in participation and, when appropriate, to foster strategies or interventions that may help bridge the gap between preference and feasibility in an existing environment. The dynamic nature of ability and the continuing advances in technology, policy, and human resources practices offer great promise toward maximizing participation of individuals with disabilities in all areas of life.

This chapter clarifies NIDRR's work in the context of disability demographics; and describes past activities and achievements in demographic studies. Examples of achievements in this area include: the establishment of a Disability Statistics Center; elucidation of the complex concept of an ''emerging universe of disability'; and delineation of problems and gaps in the current disability demographics effort. The chapter further identifies target areas for priority attention and presents a future agenda for NIDRR.

The Context for Research in Disability Demographics

Many organizations continue to collect important information about individuals with disabilities. At least five major national surveys are in existence, along with untold numbers of minor surveys and databases related to the use of specific programs and surveys.

An overarching concern in disability demographics is the assessment of the intersection of the individual and the environment. At the individual level, one may note varying degrees of function, variation in demographic factors, and variation in preferences. National datasets focus on measurements that allow one to describe the individual in isolation from his or her surroundings. At the environmental level, researchers are beginning to explore measures of barriers and facilitators to participation. Measures of participation vary, although sources such as the National Health Interview Survey/Disability (NHIS-D) and the Survey on Income and Program Participation (SIPP) move toward evaluating the gestalt of social performance.

A lack of standardized definitions, terminology, coding, classification, and measurement of disability and functioning often limits generalization of research findings. Extending use of research findings or population trends to inform policy or clinical interventions is limited due to the difficulty of extrapolating knowledge about disabilities from a disparate range of data sources, classification and coding systems, and measures of disability. For example, it is important to estimate future potential demands on rehabilitation systems, but existing population data sources do not adequately provide for planning, development, and evaluation of rehabilitation services and population trends. The ICF, which is described elsewhere in this plan, is a coding system that promises to allow the assessment of disability as a dynamic interaction between the person and the environment.

NIDRR's mission and its measurement tools are complicated by the interaction of static and dynamic variables that describe the background of disabilities. For example, people age, health changes, economic circumstances vary, and accidents occur. Point-in-time data sources may describe facets of disability, if enough questions are asked, but the environmental context often is absent.

A range of researchers and consumers of data have noted the problem in obtaining valid and reliable data about disability prevalence and its consequences. For policy purposes, the Census is a critical resource, as is the American Community Survey (ACS). Federal, State, and local planning underscore the role of the Census. Nonetheless, as noted by the NCD, there are methodological problems with the measures used in the Census.

Descriptions of the Population With Disabilities From Existing Surveys

Due to the variety of measurement tools for disability, there is no simple answer to the question of how many people with disabilities are living in the United States. Overall estimates of the prevalence of disability in key national data sources range from five or six percent up to more than 20 percent. For planning purposes, policymakers, advocates, and the media often cite the figure of 54 million Americans with disabilities.

Measures of disability in Federal surveys reflect a variety of needs across agencies for gathering such data. The ACS and the SIPP of 2002, both produced by the U.S. Census Bureau, reported that the prevalence of disability among males from 18 to 64 years of age ranges from 13.5 percent (ACS) to 14.8 percent (SIPP). Also, for example, the prevalence of disability among females from 18 to 64 years of age ranges from 13.4 percent (ACS) to 20.1 percent in the SIPP. For females 65 years of age and older, the ACS reported a disability prevalence rate of 43.5 percent while the SIPP reported a 50.4 percent rate. Males age 65 and older had a 41.0 percent rate of disability according to ACS data and 40.4 percent according to the SIPP.

It must be noted that each of the national surveys is tied to a program mandate other than the estimation and characterization of disability, especially as it is presented in the NIDRR paradigm. Major data collections

generally are related to health status, employment status, benefits recipient status, and program usage. Thus, it is understandable that they use varying definitions of disability and sample parameters.

Measures of severity of disability are critical for purposes of the Act. Each of the national datasets can be used to estimate the prevalence of significant disability. Generally, limitations in activities of daily living (ADLs)—for example, bathing, eating, and getting dressed—reflect the greatest severity, with limitations in instrumental activities of daily living (IADLs)—cooking, shopping, and managing money—and in working also are components of severity. For working-age adults, working at a job or business is often a major life role, and work limitation figures show the impact of disability on the ability to work. Overall trends regarding employment and disability have emerged from various data sources. Generally, disability is associated with lower labor force participation and earnings.

Review of the NHIS, SIPP, and Census indicates variations in estimates, reflecting methodological differences such as question wording, data collection, and coverage. These three data sources were examined for prevalence estimates of need for help with ADLs or IADLs and work limitations among adults aged 18 through 69. In 2000, the NHIS estimated 1.8 percent of the population needed help with ADLs, the SIPP reported 3.8 percent and the Census reported 9.0 percent. For IADLs, the NHIS estimated 4.2 percent of the population needed help, the SIPP estimated 6.2 percent and the Census estimate was 9.8 percent. Looking at limitations on work, the NHIS provides estimates of limitations in ability to carry on work and other age-appropriate major activities. The SIPP and the Census also measure what are frequently called work limitations, with the Current Population Survey (CPS) sometimes being used as a source of numbers on ''work disability.'' Again, there is variation in the questions on these surveys. Prevalence estimates for work limitation from the NHIS, the SIPP, and the Census were 2.6 percent, 8.6 percent, and 11.9 percent, respectively.

Measures of self-care, and the need for personal assistance or technologies, provide rich data for understanding more severe disability. Exploration of such needs also highlights cultural and socioeconomic variations in access to help. Across data sources that measure need for help with personal care, such as the NHIS and the SIPP, there are consistent trends showing that increasing age is a key factor in need for assistance. Thus, aging is strongly correlated with disability and with the need for functional supports including technology and environmental access. Predicted changes in the demographics of the general population will have substantial impact on the distribution of disability and the need for specialized technologies to assist individuals with disabilities. The U.S. Census Bureau has projected substantial increases during the next several decades in the percentage of the general population ages 65 and older.

Emerging Universe: Population Demographics and Disability

In its 1999–2003 Long-Range Plan, NIDRR noted a phenomenon it called an ''emerging universe of disability.'' The emerging universe was defined by changes in the distribution of disability according to demographic characteristics. This ''universe'' encompassed changes in the age, ethnic composition, income, education, and immigrant status of the population, as well as the appearance of new impairments, and different etiologies and consequences of existing disabilities. Research supported by NIDRR has tended to validate this construction, and to provide a description of the emerging universe.

As noted earlier, certain trends are common across national data systems that measure disability. Individuals with disability are more likely to be older, less educated, unemployed or out of the labor market, reliant on public as opposed to private health insurance, poor or near poor, and black or Native American as opposed to white or Asian. In addition, there is a geographic imbalance, with disability rates highest in the South.

Poverty as both an input to disability and an outcome of disability requires better understanding. As an underlying variable, poverty may discourage full social participation by people who are from minority backgrounds and have disabilities. As Fujiura and his colleagues write, ''across all ethnic/racial and age cohorts, rates of disability were higher among low income households; above the low income threshold, group differences were greatly attenuated. Black and Hispanic children with a disability lived disproportionately in low-income, single-parent homes.'' (Fujiura, 2000) One must disentangle economic, health, and social risks and policies to fully understand the impact of disability on persons from diverse backgrounds. The flux of the general population, due to increasing diversity, immigration, the growth of the Hispanic population, and the graying of the baby boom generation, presents challenges to existing service systems. Emergent health conditions are yet another factor that introduces complexity. Ultimately, NIDRR researchers will need to evaluate the impact of all of these factors on the equalization of access, opportunity, and successful outcomes for people with disabilities in fulfilling a range of social roles.

Accomplishments in Disability Demographics Research

- *Disability Statistics Center (DSC)*—NIDRR has long funded a DSC as a resource for researchers, policymakers, service providers, consumers, and others. That investment has yielded a number of key reports about the status of individuals with disabilities and their lives. In addition, through its investment in a statistics center, NIDRR has played a significant role in C-B by encouraging disability researchers to understand and analyze demographic data.
- *Emerging Universe of Disability*—Description and increased understanding of the emerging universe of disability, which refers to a disabled population that is shaped by several elements including demographic changes in age, immigrant status, and other socioeconomic factors; new types of conditions; consequences of treatments of existing conditions; and differential distribution of conditions and their consequences. NIDRR researchers' work in examining and explaining this phenomenon has helped to increase attention in the last six years on the unique needs of this ''emerging universe,'' including a focus on cultural and economic factors affecting disability.
- *Publications of Disability Data*—In addition to reports from its DSC, NIDRR has funded a series of Chartbooks that present important data in formats that are accessible to those who are not researchers. Most recently, NIDRR has published a Chartbook on Mental Health and Disability.
- *Improved Measurement*—NIDRR has been a key player in the development, dissemination, and adoption of the shift in conceptualization of disability from a medical to a sociomedical model. As part of that work, NIDRR grantees have contributed to the development of improved survey questions that measure issues of health, well-being, and participation as they relate to individuals with disabilities. In addition, NIDRR has played a

significant role in the development of the ICF that offers potential to facilitate better understanding of individuals with disabilities across a variety of disparate data sources.

• *Primary data collection*—NIDRR supports data collection in a variety of venues. Through its model systems, NIDRR collects data that addresses the efficacy of a variety of rehabilitation methods. NIDRR grantees have collected population-based data that describe specific populations such as individuals with MS or other conditions. Recently, NIDRR designed and funded a national survey regarding the use of and need for assistive technologies.

• *Interagency collaboration*—Through its leadership in the ISDS and other mechanisms, NIDRR has been a leader in promoting the collection of data about individuals with disabilities using a variety of Federal surveys. NIDRR has provided both financial and intellectual support for such efforts.

Research Agenda

NIDRR's performance goals in disability demographics are intended to increase the ability to describe the characteristics and circumstances of people with disabilities and their family members by:

• Improving the ability to collect disability data through the joint development of a standard nomenclature and methodological standards, including sampling, in collaboration with other Federal and non-Federal entities.

As a key objective, NIDRR will continue to support efforts that utilize multiple sources to examine the current state of affairs and trends that allow the projection of future needs. Existing data sources are sometimes contradictory, suggesting an intermediate need to evaluate the reasons for the inconsistencies. No one current source can provide all the important information needed about key inputs such as PAS, assistive technology, environmental facilitators and barriers, and their interactions. In the absence of a valid and reliable national disability survey, meta-analysis threads together the best available sources of topic-specific data.

In conjunction with other Federal partners, NIDRR will support the methodological work that yields the tools needed to implement a national survey of disability across the life span. The 1994–95 NHIS on Disability is a good model for future efforts, with the necessary addition of consumer experts to evaluate the content areas. Of note is that efforts to develop a national disability survey will be of great value even if such a large survey cannot be fielded in the foreseeable future. Each component of a cohesive national survey will have utility in surveys that are agency or mission specific. Resolution of complex sampling issues will benefit any survey that must include a representative proportion of individuals with disabilities. Development of topical modules with reliable and valid measures will yield instruments that can be used in a variety of data collections so that information is available about varying subgroups or the interaction of a variety of factors.

• Enhancing the understanding of the number and characteristics of people with disabilities through targeted studies of existing data.

Through much of its research portfolio, NIDRR will continue to support secondary analyses that lead to understanding of the basic life-cycle events and experiences of people with disabilities. Parsing the population of people with disabilities through cross-tabulation with other demographic variables will continue to be a focus. Linking the national and smaller data sources will be a priority. In the near and mid term, NIDRR will continue its work to evaluate and analyze existing data.

• Improving the science of disability demographics by developing and/or improving the measures of the interaction between technology and the physical environment, the social environment, and social policy as they affect people with disabilities.

NIDRR will stimulate the development of new measures of the interaction between technology and the physical environment, the social environment, and social policy. Such data are important for evaluating policies, including those enumerated in the NFI. Researchers must develop measures and indicators to assess the impact of environmental barriers and facilitators and encourage widespread use of these measures to evaluate how technology enables people with disabilities to succeed in school, work, and community and lead more productive and rewarding lives.

The ultimate goal of NIDRR's disability demographics effort is to generate new information that can be used by intermediate and intended beneficiaries who are working to identifying and eliminate disparities in employment, participation and community life, and health and function. Personal care, work, culture, and health are several of the rich areas that NIDRR and its grantees have studied. First, the concern with data threads through virtually all components of the study of disability. In order to understand needs and impacts, and to evaluate outcomes, quantitative analyses play a key role. In addition, one must often consult multiple sources of data to develop range estimates or compare trends. NIDRR has long funded studies that mine data to address the full range of social, health, and economic facets of disability and that compare findings across data sources. There are significant correlates with disability, such as aging, and there are a variety of links between disability and culture, race, and ethnicity. Supporting multiple sources for examining the current state of affairs for people with disabilities will provide important data that can be used to advance many areas of disability and rehabilitation research.

Research has identified gaps in data, such as the sparse measurement of the interface between individual and environment. NIDRR will nurture the methodological work that will address those gaps. Along with improved measures, there is much to be done to address problems in sampling and data collection. Research must document and evaluate the effects of long-term impacts of interventions to facilitate participation. In particular, research must address geographically and ethnically diverse populations to ascertain differences in needs and effects.

To be useful for policy, research, programs, and services, data must be grounded in an appropriate organizational framework, such as the ICF. The ICF is a scheme organized around function, activity, participation, and environmental context. To evaluate the potential uses of the ICF, a variety of measurement tools and data systems must be examined in addition to further evaluation of the implications of the classification system for U.S. populations.

II. Capacity Building

Overview

This chapter addresses a critical research building block, C–B, recognized as one of the three short-term arenas through which NIDRR achieves its goals. An important function of this chapter is to define C–B and its key dimensions in a context that reflects NIDRR's mission. The following sections describe the multidimensional aspects of C–B, provide a brief review of selected NIDRR C–B accomplishments, and discuss future directions and specific goals and objectives in C–B.

Definition of Capacity Building

As illustrated in the Logic Model (see Appendix 2), C–B is foundational for NIDRR's agenda. NIDRR C–B includes three major components: (1) Improving and building a larger and better quality supply of individuals to conduct research, (2) building a research infrastructure at institutions to carry out research and related activities, and (3) increasing the ability of consumers to interpret and use research and to play an active role in the research process.

At the individual level, NIDRR focuses on C–B to ensure a source of researchers to carry out the research agenda, and to enhance researchers' ability to generate useful knowledge. NIDRR historically has sought to increase the number of individuals from underrepresented groups in this effort, particularly those with disabilities. At the organizational or systems level, NIDRR C–B supports the framework for carrying out individual level research work. At a systems level, all NIDRR programs may be said to involve C–B, in that NIDRR funding is intended to increase the capacity of the field to conduct high quality research directed at the long-term goals and objectives identified in the Logic Model. Another important dimension of NIDRR C–B is the development of strategies to assist individuals with disabilities and their families, as well as practitioners, to use research findings to assist with choices of interventions and improve consumer involvement in the research process. This process begins with research design and extends to implementation, evaluation, and dissemination.

Context for Capacity Building

NIDRR's principal statutory mandate for training is to support advanced instruction for researchers and service providers. Consistent with this mandate, the 1999–2003 NIDRR Long-Range Plan defined C–B as multidimensional and involving training for those who participate in all aspects of the disability research field, including scientists, service providers, and consumers. NIDRR also has a mandate, strengthened in the 1992 amendments to the Act, to train peer reviewers, particularly consumers, and to train consumers to apply new research knowledge and to use assistive technology.

Individual Level

At the individual level, NIDRR's current C–B activities focus primarily on support for individuals, most of who already have selected research as a career, and have completed doctoral studies. Both the Fellowship program and the ARRT program provide support to individuals who fall within this category. While this support assists with developing careers of young investigators, it may not be optimal for supporting other research C–B, particularly with regard to recruitment and career development for individuals with disabilities or those from underrepresented racial and ethnic populations. NIDRR acknowledges the need for supporting increased development of research as a career at the secondary school and undergraduate educational levels, particularly focusing on students with disabilities and those from diverse cultural groups. NIDRR will look for opportunities to partner with other Federal agencies on research initiatives in this area.

Systems Level

NIDRR has several program mechanisms by which it funds C–B. The programs include the ARRT program, Fellowship program, NIDRR Scholars, Minority Development/Section 21 program, RRTCs, and RERCs.

ARRTs provide research training that integrates disciplines, teaches, and enhances research methodology skills, and trains researchers in disability and rehabilitation science. These training programs operate in interdisciplinary environments and provide training in rigorous scientific methods.

The Fellowships augment scholarly careers in the field, and function in an integrative capacity to define new frontiers of disability and rehabilitation research. This program provides opportunities for interaction among the fellows and for exposure to established researchers and policymakers. Additionally, fellows have the opportunity to participate in an annual research dissemination program where their findings are presented and discussed with research experts.

The NIDRR Scholars program recruits undergraduates with disabilities to work in NIDRR-funded research centers and to participate in research activities that expose them to disability and rehabilitation research issues, while at the same time providing work experience and income. This program is an innovative approach aimed at generating interest in research careers for individuals with disabilities and other underrepresented populations.

The Minority Development program focuses on research C–B for minority entities such as Historically Black Colleges and Universities (HBCU) and institutions serving primarily Hispanic, Asian, and American Indian students. Program administration activities include strategies to assist minority entities with networking activities focusing on collaboration, exchange of expertise and advanced training.

Training activities conducted by funded entities such as those participating in the RRTC and RERC programs capitalize on the existing critical mass of expertise and knowledge to provide:

- Experiential and academic training for researchers and clinicians at the undergraduate, graduate, and post-graduate levels, including continuing education activities.
- In-service training for rehabilitation practitioners.
- Training for consumers, their families, and representatives in implications and applications of new research-based knowledge.

Accomplishments in Capacity Building

NIDRR has built capacity for research in a number of ways. Most obvious is its investment in C–B programs to increase the skills of qualified researchers in the disability and rehabilitation field. The NIDRR-supported programs also have had the effect of increasing the numbers of disability researchers who are individuals with disabilities or members of minority populations. The ARRT program, while intended to promote research contributions in the long term, focuses primarily on increasing the number of individuals qualified to conduct rehabilitation research. These may include professionals in clinical settings who wish to sharpen their research skills through institution-based training programs. NIDRR has funded 29 programs under this rubric since 1992. The Fellowship program, while encouraging individuals to increase their expertise in research through the fellowship experience, focuses directly on promoting contributions to the knowledge base. There have been more than 200 fellows funded since the inception of this program with the first ''class'' in 1983. The fellowship experience allows for an intensely focused one-year research activity that is investigator-initiated and involves independent research. This fellowship program has resulted in numerous peer-reviewed journal articles, books and book chapters, as well as refinements in instruments originally developed in other settings.

Most of those who have received funding under these two programs have remained in the disability and rehabilitation research field. In recent years, there has been a ''progression'' from those who received structured mentoring under the ARRT program to their place as full-fledged principal

investigators in NIDRR centers or other programs. However, the fellowship opportunity allows for the support of individual researchers, including those not based at universities, and the flexibility of this approach and the camaraderie engendered in this program have received considerable praise from former participants.

NIDRR has made a major investment in the infrastructure of research through development of the model systems programs in SCI, TBI, and burn. These model systems have made major advancements in the capacity to conduct care for individuals with these conditions. Models systems also have contributed to C–B by putting into place a system for conducting multicenter trials.

Future Agenda

The capability to conduct first-rate research depends on a commitment to providing opportunities for learning the multiple skills required for designing scientifically sound studies, selecting appropriate research methods, analyzing data, and interpreting and reporting findings. NIDRR intends to support C–B activities that incorporate training in the application of research findings to the real-world needs of people with disabilities and the entities that impact their lives, including policymaking. Training aimed at transferring research findings into practical use is critical for C–B at the organizational and individual levels. However, the training must take into account scientific advancements across relevant disciplines, the state-of-the-science, the emerging universe of disability, cultural diversity, and the changing demographic profile of the Nation; otherwise this training is no longer relevant and cannot contribute effectively to research C–B.

NIDRR supports diversification initiatives and training that will attract and increase the participation of researchers, particularly individuals with disabilities and those from diverse cultural backgrounds, and will provide them with high level preparation. NIDRR will place increased emphasis on institutional C–B and building research infrastructure, in addition to developing a plan of evaluation of C–B. NIDRR C–B will extend to increased training for KT of research and the expansion of multidisciplinary research.

NIDRR has invested in C–B programs to increase the number and skills of researchers qualified to work in the disability and rehabilitation field. There are a number of external factors that may affect the success of an effort to build capacity in research, including the anticipated availability of funding for research; the potential for increased attention to preparation for service delivery at the expense of research knowledge and skill building; and the changing demographic profile of the student, professional, and disability communities. Understanding these issues via research activities can inform training and practice needs, and help to ensure that policies are sensitive to these concerns.

Thus, NIDRR intends to:

- Enhance the capacity to solve problems in creative, state-of-the-art ways by encouraging researchers from different cultural, racial, and academic backgrounds to conduct culturally-competent research in new settings that represent the contextual experiences of individuals with disabilities and stakeholders.
- Enhance cross-disciplinary and advanced research training opportunities in disability and rehabilitation-related fields for rehabilitation professionals and qualified individuals, including individuals with disabilities and individuals from minority backgrounds.
- Increase the capacity of persons with disabilities, family members, and advocates to understand and use research findings through training and participatory research experiences.
- Strengthen its research portfolio by increasing the number and type of partnerships with Federal and non-federal research and development agencies that conduct clinical trials and experiment with innovative approaches to R&D infrastructure development.

Various projects have been funded to study the cultural and contextual nature of disability experiences. These projects may help in training the field to design its research efforts using a framework different than the traditional view of disability, but also may put forth new ways in which disability research is conducted. For example, a recent research priority focused on generating greater emphasis on promoting collaboration between minority and non-minority entities and examining the implications of traditional methods, models, and measurement for traditionally underrepresented populations. The changing profile of the disabled population will require intercultural competence, and engaging collaborative research is one approach to meeting those needs. Essential to this process of improving collaboration is the necessity to identify factors that are effective in facilitating collaborative research endeavors across disciplines and the research community, including partnerships between minority and majority entities and relevant disciplines. The community-based research initiative, which fosters partnerships between academic institutions and disability organizations and advocates, illustrates this point.

Other priorities in examining the contextual nature of disability include studies that illustrate the influence of the intersection of the person and environment; exploration of context and culture with regard to specific disability populations; and topics such as assistive technology, disability rights, health promotion, family relationships, and community reintegration. Adding research that examines the evolutionary processes of policy, science, practice, and business or clinical culture can be an important element in creating a better understanding of the factors that shape both professional and disability experiences. Preparing researchers to examine environments where advanced technology, emerging disabilities, economics, and other factors influence training, practice and rehabilitation outcomes can help to improve the development, planning, implementation, and evaluation of programs to promote disability rights, health maintenance, family relationships, and community reintegration. NIDRR anticipates continued leveraging of the strong base of activity of NIDRR's RRTCs and RERCs serving as centers of excellence in rehabilitation research, to further enhance programmatic C–B through these centers.

III. Knowledge Translation

Overview

The KT process actively engages disability researchers, researchers from other disciplines, service providers, policymakers, and persons with disabilities and their families in the interchange, synthesis and application of rehabilitation research knowledge. KT activities are a central part of NIDRR's mission and provide an important pathway for improving the quality of life for individuals with disabilities. Outlining a central role for KT in this Plan is consistent with NIDRR's authorizing statute as well as the expressed interests of stakeholders collected throughout the long-range planning process. It also builds upon the strong history of KDU activities conducted by NIDRR and its grantees. NIDRR will focus its specific KT activities in the domains of employment, participation and community living, health and function, and technology.

Definition of Knowledge Translation

For NIDRR, the definition of KT refers to the multidimensional, active process of ensuring that new knowledge gained through the course of research ultimately improves the lives of people with disabilities, and furthers their participation in society. The process is active, as it not only accumulates information, but it also filters the information for relevance and appropriateness, and recasts that information in language useful and accessible for the intended audience. KT includes transfer of technology, particularly products and devices, from the research and development setting to the commercial marketplace to make possible widespread utilization of the products or devices.

NIDRR is particularly focused on ensuring that disseminated information is of high quality and based on scientifically rigorous research and development. To advance its dissemination of high quality research, NIDRR may analyze aspects of successful procedures used for review, synthesis and dissemination of research findings by other agencies for potential usefulness in NIDRR KT activities. NIDRR is especially interested in using models that encourage a thorough discussion of research findings among researchers, with emphasis on rigor and application possibilities. NIDRR also wants to ensure that potential end users of information will have the information they need to judge the quality of research and development findings and products, from NIDRR and other agencies, and the relevance of these findings and products to their particular needs.

The most appropriate target audience for KT will be determined in large part by the domain and the stage of knowledge development under consideration. For example, research on theories, measures and methods will find a primary audience among researchers and practitioners, whereas the primary target for activities related to new and improved products and environmental adaptations will be people with disabilities and service providers. The scope of KT as envisioned in this Plan covers a wide range of activities and involves a variety of mechanisms, including publication of research results, determination of the effectiveness of research applications, development of targeted materials, and the transfer of technology.

The Context for Knowledge Translation

The Institute has had a mission to disseminate its research findings, and promote their utilization with a range of audiences, since its establishment. As NIDRR expanded its conceptions and practice of KT, the focus shifted from the perception of dissemination and utilization as a linear, mechanical process of information transfer—in which knowledge is packaged and moved from one place to another—to a highly complex, nonlinear, interactive process, critically dependent on the beliefs, values, circumstances, and needs of intended users. This refocusing provided a key element for successful KT activities as potential users now take an active role in acquiring and using new knowledge. This change has paralleled the progressive improvement in models used in disability research that position people with disabilities in a highly integrative role as opposed to a non-participatory role.

Most NIDRR centers and projects now fund information and dissemination activities, with these activities becoming more coordinated and integral to planning in recent years with the establishment of a national center to disseminate NIDRR grantees' research. NIDRR also has carried out specific KT activities through grants and contracts monitored by NIDRR staff.

NIDRR intends that every new research project funded under this Plan should develop and share new knowledge to improve the lives of citizens with disabilities. In the United States, NIDRR and many other research agencies have endeavored to make scientific results accessible to all citizens, particularly results of Federal government-supported research. Several science-related institutions including the National Academy of Sciences (NAS), the National Science Foundation (NSF), and the National Institutes of Health (NIH) have developed portals of information that present research results, in various formats, to a large numbers of users. Since 1994, NIDRR has funded the National Center for Dissemination of Disability Research (NCDDR) for many of its KT activities. Most of the NCDDR work is done through databases and Web pages linked to other critical sources of research information. Researchers, educators, service providers, and individuals with disabilities use these easily accessible sources.

Challenges in Knowledge Translation

The biggest challenge faced by NIDRR, and other major research agencies, is to diversify KT activities to better serve various constituencies. While research organizations generally are good at peer-to-peer dissemination, the leap required to move from research to practice can be much more difficult. This process demands filtering the information, determining the quality of the findings (source and content), and aggregating research information from a number of NIDRR research venues (no single project addresses all aspects of a problem). It also requires a clear determination of how the research was conducted and how it might fit the user's needs. KT also requires the development of expertise in a number of media areas and development of strategies that could be employed to reach end users. The tasks of translation require regular contact between the translator and the original researcher. While a researcher might not be the best person to do the final dissemination, his/her involvement is essential to KT. The research must envision the target system in the beginning of research, the creation of a dissemination plan, and the development of a plan to evaluate the outcome.

NIDRR intends to assist people with disabilities and their families, and the general public, to efficiently access information. This may require ''mediated navigation,'' that is, individuals may need an intermediary to help them in the search for answers to their questions. Some of the most common intermediary roles are librarian, information specialist, knowledge management specialist, database coordinator, or trainer. Similarly, many stakeholders may benefit from appropriate translation of information into accessible forms. The use of multiple mechanisms for dissemination will be employed including knowledge sharing practices that make the maximum use of Web servers, subscriptions systems, e-forums, feedback systems, databases, Communities of Practice (COP), virtual libraries and other solutions-related activities. COPs involve groups of people who share a concern, set of problems, mandate, or sense of purpose. COPs serve to reconnect individuals with each other in self-organizing, boundary-spanning communities. COPs complement existing information structures by promoting collaboration, information exchange, and sharing of best practices across boundaries of time, distance, and organizational hierarchies.

Accomplishments in Knowledge Translation

For more than 20 years, NIDRR has funded several research databases for individuals with disabilities. These and other vehicles of KDU have served as important resources for consumers, practitioners, policymakers and researchers. NIDRR-funded databases

have focused on applied rehabilitation research and the provision of resources to provide access to up-to-date information on assistive technology and other useful consumer information. In the last decade, NIDRR has refocused and strengthened its KDU effort through focusing on the end users of information, by capitalizing on technology and by creating a technical assistance resource and a network of KDU centers (KDUCs). By refocusing on the end users of information, the KDU program has made researchers increasingly aware of the need to look beyond parochial dissemination channels to the information needs of stakeholder audiences such as people with disabilities and their families, disability organizations, policymakers and researchers in other fields.

The KDU program increased the outreach of grantees in many ways including by taking advantage of the growth of the World Wide Web and distance learning techniques to promote electronic dissemination. Through publication of Research Exchange issues on dissemination, reinforced by presentations at the National Association of Rehabilitation Research and Training Centers (NARRTC), SCI and RERC meetings, and technical assistance in one-on-one sessions, the number of NIDRR grantees with Web sites increased from 33 percent to more than 85 percent over a five-year period. Currently, almost all NIDRR grantees have Web sites. By continually monitoring the sites and referring grantees to tools such as the Web Accessibility Initiative (WAI), NIDRR has seen major improvements in the accessibility of the grantee Web sites to people with disabilities.

Specific KDUCs, which have focused on such topics as IL, have provided an array of ''translated'' material derived from NIDRR research. The material is presented in language that can be used readily by consumers. The materials produced by KDUCs have helped the public understand issues regarding the *Olmstead* decision, the capabilities of people with mental disabilities or illness, and the success that people with disabilities can have as parents. They also have encouraged private entities such as the Pew Foundation, to include disability as an issue of importance in reports and grants.

The NIDRR KDU program also has expanded its component projects and increased their utility to the public by establishing a public Web site with about 60,000 holdings on NIDRR disability research. Instant online searching of that information is available. A NIDRR Program Directory provides descriptions on and contact information for the wide range of NIDRR-funded activities. A searchable online database was created to provide ready access to findings and results of NIDRR grantees' research, and is updated weekly. Through the centralization of information, numerous reports and data on many NIDRR grantees are readily available, thus reducing the need to search every NIDRR grantee's Web site for research outcomes. More than 1,200 resources now are entered in the Electronic Library, and 250 entries are in the Spanish version, the Biblioteca Electronica.

In addition, NIDRR has funded the premier database of information on assistive technology, ABLEDATA, since 1980; it is a national resource for assistive and rehabilitative technology product information. Using the World Wide Web, the database is searched more than 1 million times annually, and generates telephone inquiries. The database offers more than 30,000 assistive technology products from domestic and international sources, and information on more than 6,000 manufacturers, and has been cited as a model for the development of similar systems.

To enable rehabilitation service providers to work more effectively with individuals born outside the United States, NIDRR funded a series of 11 monographs that describe the cultures and customs of foreign countries. The 11 countries chosen for the monographs were those with the highest number of emigrants to the United States. The monographs addressed issues that are crucial for service providers to understand in their work to achieve successful rehabilitation outcomes with foreign-born individuals who have disabilities.

Future Agenda

NIDRR is interested in developing improved ways to make information accessible to the research community and to disability-related agencies and organizations. NIDRR will continue to encourage and support dissemination of research information to consumers as an important aspect of its mission and legislative mandate. Building on NIDRR's solid foundation of peer-to-peer dissemination, individual centers will be encouraged to reach out to their constituent populations.

NIDRR intends to strengthen the dissemination work done by its specific content-based KT centers and regional networks of technical assistance centers. NIDRR will examine the use of its regional networks of technical assistance centers that focus on the ADA and educational technology, and look at expanding their scope to include high quality review and discussion of research results from NIDRR researchers before translation and dissemination to the public. NIDRR will advance its KT activities by emphasizing expert judgments on the value of information for further dissemination; better accountability for outputs produced by NIDRR researchers, and improved methods for making this information available beyond the research community. NIDRR will support all centers as they maintain and disseminate information of wide relevance to persons with disabilities and will encourage the effective use of electronic transmission, accessible media, and translation into multiple formats. In this effort, NIDRR will focus on ways of publishing and disseminating research to the public that will improve upon the traditional dissemination tools and methods and advance the use of technology to promote accessible video libraries and virtual libraries, among other methods.

Knowledge Translation includes the provision of information, technical assistance, and training in areas related to disability policy. The Act assigns to NIDRR the responsibility for those activities in relation to the ADA. NIDRR intends to implement those activities through a national network of regionally based centers that will provide assistance to disability organizations, individuals with disabilities, businesses, public agencies, and the general public, and that will contribute to research on topics covered under the ADA.

NIDRR will further the development of a theory of KT, the development of measures of success, and uniform definitions and requirements of NIDRR grantees and contractors. These complex endeavors will be undertaken with support from the network of all NIDRR's DRRP and KT projects. The efforts will concentrate on developing mechanisms to learn how research results are relevant to stakeholder needs and how the research results can help people with disabilities improve their conditions—for example, achieve better access to education, employment, independent living and wellness.

NIDRR will increase its KT activities by examining the needs of the end users of information. The new approach will look at the user needs in terms of: characterizing users of NIDRR's research; identifying users' goals or purposes; assuring alignment of the nature and quality of the information disseminated with the goals of the users;

providing support and assistance to different users to help them find the information that they need; and meeting the accessibility requirements of people with disabilities. This approach also will facilitate NIDRR's growth in the KT area by addressing questions on methods for KT including: a mechanism for the review and validation of project results as a stage in translation; assistance to projects in using existing clearinghouses; and a mechanism to track specific results to identify long-term accomplishments.

NIDRR will focus on high quality peer review and discussion of one major product for each research and development area each year. This type of peer discussion and consensus by researchers will be facilitated through a special database and the results will be reviewed for accuracy and completeness.

Thus, NIDRR's agenda in the area of KT is designed to:

- Increase the availability of relevant information to NIDRR's intermediate and intended beneficiaries by developing and implementing a systematic approach to vetting information.
- Increase understanding of how best to communicate new knowledge to beneficiaries.
- Increase the availability of technologies that enable independent mobility, control, and manipulation of the home, community and workplace environments and access and use of information through technology transfer.

Appendix 1—Expert Panel Members

Elena Andresen, a professor and chief of the epidemiology division in the Department of Health Services Research, Management and Policy at the University of Florida, has over 15 years of experience in the area of epidemiology. Her research interests include women's health and chronic disease epidemiology, disability, and the use of outcomes measures in clinical, epidemiologic and health services research. Andresen's grant review participation includes the Centers for Disease Control and Prevention (CDC), the National Institutes on Aging, and Department of Veterans Affairs (VA). She also has served on committees for the Institute of Medicine, the Agency for Healthcare Research and Quality (AHRQ), and the CDC. Andresen is a member of the American Public Health Association, the American College of Epidemiology, the Association of Teachers of Preventive Medicine, and the Society for Epidemiologic Research. Andresen has a doctoral degree in epidemiology from the University of Washington.

Bobbie J. Atkins, a professor in the Master's Program in Rehabilitation Counseling at San Diego State University, has over 25 years of experience in teaching, research, writing, and service in rehabilitation counseling. She has distinguished herself as a leader nationally and internationally with expertise in diversity, alcohol and drug prevention, AIDS education, and supervision. In 1999, the National Association for Multicultural Rehabilitation Concerns named its research award the Bobbie J. Atkins Rehabilitation Research Award. Atkins has received numerous awards including the Mary E. Switzer Fellow from the National Rehabilitation Association and has served on the President's Committee on Employment of Persons with Disabilities. She is the 2003 recipient of the National Rehabilitation Association (NRA) Presidents' Award for outstanding contributions to the field of rehabilitation. As the current project director of Project Success, a Rehabilitation Services Administration (RSA) funded capacity-building project, she is directly impacting people of color through training and technical assistance on grant writing and submission. Atkins' doctoral degree in rehabilitation counseling psychology is from the University of Wisconsin-Madison.

Henry B. Betts, chairman of the Rehabilitation Institute of Chicago (RIC) Foundation, is a pioneer in the field of rehabilitation medicine. He has served the RIC as president, chief executive officer and medical director. He was chairman of the Department of Physical Medicine and Rehabilitation at Northwestern University's Feinberg School of Medicine until October 1994 and also the first Paul B. Magnuson Professor in that department. Betts has spent his life changing attitudes and improving conditions for people with disabilities. At RIC, he created what is now one of the Nation's largest residency programs in physical medicine and rehabilitation. He has advocated for many issues including the Americans with Disabilities Act of 1990, improved accessibility in public buildings and walkways, and seat belt and drunk driving laws. He works vigorously on issues of employment of people with disabilities. Betts serves as a board member on many professional and community organizations. The Prince Charitable Trusts honored his efforts in 1990 by establishing the Henry B. Betts Award, conferred annually upon an individual whose work has benefited the disability community. Betts has a medical degree from the University of Virginia.

Frank G. Bowe, the Dr. Mervin Livingston Schloss Distinguished Professor at Hofstra University, teaches courses in special education, technology and rehabilitation in the department of counseling, research and special education. His first job was working with the late Mary E. Switzer, America's foremost leader and trailblazer for innovative programs at the national, State and local levels for people with disabilities in vocational rehabilitation. As the founding chief executive officer of the American Coalition of Citizens with Disabilities (ACCD) in the late 1970s, Bowe was instrumental in the implementation of historic civil rights for people with disabilities, including sections 501–504 of the Rehabilitation Act, housing, transportation and special education. He has held several congressional and presidential appointments. For over 25 years, Bowe has advised the U.S. Senate, the U.S. House of Representatives and executive branch agencies on Federal disability policy. He has received numerous awards including the Distinguished Service Award of the President of the United States and the Americans with Disabilities Act Award for his role in the enactment of the legislation. Bowe has a doctoral degree in educational psychology from New York University.

Judi Chamberlin, a psychiatric survivor, author and activist is a co-founder of the Ruby Rogers Advocacy and Drop-In Center, a self-help center run by and for people who have received psychiatric services. She is the author of On Our Own: Patient Controlled Alternatives to the Mental Health System. Chamberlin is the Director of Education and Training at the National Empowerment Center and is a senior consultant at the Boston University Center for Psychiatric Rehabilitation where she directed a research project on user-run self-help services. She has spoken at conferences and meetings throughout the U.S. and abroad and has appeared on many radio and television programs discussing the topics of self-help and patients' rights. Chamberlin has received numerous awards for efforts including the Distinguished Service Award of the President of the United States by the President's Committee on Employment of People with Disabilities, the David J. Vail National Advocacy Award, and the 1995 Pike Prize, which honors those who have given outstanding service to people with disabilities.

Dudley S. Childress is a professor of biomedical engineering in the Department of Physical Medicine and Rehabilitation at Northwestern University and a research health scientist in the VA's Chicago Health Care System-Lakeside Division where he directs the Prosthetics Research Laboratory. At Northwestern, he directs NIDRR's RERC in Prosthetics and Orthotics and is the executive director for the Prosthetics and Orthotics Education Program. His present research and development activities are concentrated in the areas of biomechanics, human walking, artificial limbs, ambulation aids and rehabilitation engineering. He engages in the development of engineering systems that assist people with ambulation problems and that provide control for artificial hand/arm replacements. Childress, a recipient of numerous honors and awards including the Missouri Honor Award for Distinguished Service in Engineering, is also a member of the Institute of Medicine of the National Academy of Sciences. Childress has a doctoral degree in electrical engineering from Northwestern University.

Patrick E. Crago is a professor and chairman of the Department of Biomedical Engineering at Case Western Reserve University. With over 25 years of engineering experience, Crago's research interests include restoration of movement by functional neuromuscular stimulation and in normal and pathological movement control and regulation. His current research projects include biomechanical, neural and neuroprosthetic control of the wrist, forearm and elbow, and the clinical implementation

and evaluation of neuroprostheses for hand grasp and proximal arm control. Crago has served on many committee and advisory boards for numerous organizations and Federal agencies. Crago has a doctoral degree in biomedical engineering from Case Western Reserve University.

Eric Dishman, a senior social scientist and principal engineer at Intel Corporation, is director of the Intel Proactive Health Lab. His team's current fieldwork and technology trials focus on helping mild cognitive impairment patients to maintain independence, function, and quality of life from their own homes through the use of wireless sensor networks and other computing technologies. In partnership with the American Association of Homes and Services for the Aging, Dishman serves as the chair of the Center for Aging Services Technologies, and he also recently co-founded the Everyday Technologies for Alzheimer's Care consortium with the Alzheimer's Association. Dishman is a nationally known speaker on the topics of aging and home healthcare technologies, and he serves as an advisor to numerous companies, universities, and Congressional members on assistive technologies, telemedicine, and home healthcare. Dishman has a master's degree in Speech Communication from Southern Illinois University at Carbondale.

Pamela W. Duncan, a physical therapist and epidemiologist, is recognized nationally and internationally as a leader in rehabilitation outcomes research and practice. Duncan recently joined the faculty at the University of Florida and is the director of the University's Brooks Center for Rehabilitation Studies and the Rehabilitation Outcomes Research Center of Excellence at the North Florida/South Georgia Veterans Health System. Her research provides leadership in evaluating the effectiveness of medical rehabilitation, the development of health status measures for the chronically disabled, and the design of clinical trials to evaluate exercise interventions for frail elders and stroke survivors. Duncan has served as co-chair of the Agency for Health Care Policy and Research (AHCPR) Post-Acute Stroke Guidelines and has served on the advisory committees for Health Care Financing Administration (HCFA), Canadian Stroke Network and the National Institute of Neurological Disorders and Strokes (NINDS). As a member of the American Heart Association (AHA) public policy committee, she advocates for national funding for rehabilitation services and research and development of quality indicators for stroke care. She is on the editorial board of numerous journals and her work has been published in a variety of journals including Stroke, the Journal of the American Geriatric Society, the Journal of Gerontology Medical Science, and the Archives of Physical Medicine and Rehabilitation. Duncan has a doctoral degree in epidemiology from the University of North Carolina-Chapel Hill.

Glenn T. Fujiura is an Associate Professor of Human Development and Director of Graduate Studies in the College of Applied Health Sciences at the University of Illinois at Chicago (UIC). Dr. Fujiura's research has focused on the fiscal structure and demography of the disability service system, on family policy, evaluation of long-term care services, poverty and disability, ethnic and racial issues in disability, and on the statistical surveillance of disability. In addition, he has a long-standing interest in research methodology, statistical analysis, and philosophy of science. He teaches research methods, advanced research concepts, and statistics for the graduate program in Disability Studies at the UIC. His current major projects include a NIDRR-supported epidemiological study of disablement in the third world using data from the World Bank and State level program evaluations. He has worked extensively in both the creation of large national data sets in mental retardation and developmental disabilities, and in the secondary analysis of national statistical surveillance systems. Dr. Fujiura was a recipient of the National Rehabilitation Association's Switzer Scholar award, served as a member of the President's Committee on Mental Retardation, and was Chair of the U.S. Administration on Developmental Disabilities Commissioner's Multicultural Advisory Committee. Fujiura has a doctoral degree in special education from the University of Illinois at Urbana-Champaign.

Allen C. Harris, the director of the Iowa Department for the Blind, has served as a chief in the Bureau of Field Operation and Implementation for the New York State Commission for the Blind and Visually Handicapped. Harris has been the recipient of numerous awards including the Lifetime Achievement Award from the National Federation of the Blind of Michigan and the Distinguished Blind Educator of the Year from the National Association of Blind Educators. He serves on several boards including the Lions Club of Iowa, the National Organization of Rehabilitation Partners and the National Council of State Agencies for the Blind. Harris has a master's degree in education from Wayne State University.

David Mank, the director of the Indiana Institute on Disability and Community, is a professor in the School of Education at Indiana University. A writer and researcher, Mank has an extensive background in the education and employment of persons with disabilities. He has extensive responsibility for Federal and State grant management of more than 20 projects as principal investigator, director or co-director. His interests include transition from school to adult life and community living. He is also past president of the Association of University Centers on Disabilities and a member of the Governing Council of the International Association for the Scientific Study of Intellectual Disabilities. In 2001, he received the Franklin Smith Award for National Distinguished Service by The Arc of the United States. Mank has a doctoral degree in special education and rehabilitation from University of Oregon.

Kathleen Martinez, deputy director of the World Institute on Disability (WID), is an internationally recognized disability rights leader with particular focus on employment, minority and gender issues. At WID, Martinez is responsible for the development and supervision of all of WID's international, technical assistance, employment and training projects. She currently supervises Proyecto Visión, a National Technical Assistance Center for Latinos with Disabilities and the five-year International Disability Exchanges and Studies for the New Millennium Project. Through these projects, Martinez oversees the production of the bilingual international webzine, Disability World, and a Web site designed to connect U.S. based disabled Latinos to the world of employment. In July 2002, she was appointed by President George W. Bush as a member of the National Council on Disability. On the Council, she chairs the International Watch Committee and is a leader in the Council's employment and diversity initiatives. Martinez has a bachelor's degree in speech and communications studies from San Francisco State University.

John L. Melvin, the Jessie B. Michie Professor and chairman of the Department of Rehabilitation Medicine at the Jefferson College of Medicine of the Thomas Jefferson University, served as medical director of the Curative Rehabilitation Center of Milwaukee, vice president for medical affairs of Moss Rehab and chairman of Physical Medicine and Rehabilitation at the Albert Einstein Medical Center of Philadelphia. Melvin has been the president or chairman of 11 major national and international organizations and has served on 41 national and international expert advisory committees including the Institute of Medicine and the National Research Council of the National Academy of Sciences. He is currently chair of the advisory board for the Boston University RRTC for Measuring Rehabilitation Outcomes sponsored by NIDRR. Melvin has a medical degree from Ohio State University.

Erica Nash, is president and executive director of Help-Your-Self, an organization that is dedicated to helping any person with disabilities improve and maintain his or her lifestyle by providing tools and services to enable community integration, independence, and increased self-sufficiency and productivity, in accordance with individual goals. Nash is a member of the Mayor's Committee on Persons with Disabilities and on other committees including the D.C. Medical Assistance Administration and the Office of Disabilities and Aging. Nash has a bachelor's degree in international communications and public relations for arts management from American University, and will complete her master's degree in technology and management for non-profit and arts organizations from American University in June of 2005.

Margaret G. Stineman is an associate professor of rehabilitation medicine in the Department of Rehabilitation Medicine, a senior fellow of the Institute on Aging, a senior fellow with the Leonard Davis Institute of Health Economics, and an associate scholar in the Clinical Epidemiology Unit of the Center for Clinical Epidemiology and Biostatistics at the University of Pennsylvania. She was the principal architect of the patient classification approach used by the Centers for Medicare and Medicaid Services in its

prospective payment system for inpatient rehabilitation facilities. She has consulted with the World Health Organization in Geneva, Switzerland, on community-based rehabilitation. Her current work focuses on addressing social and environmental barriers to the participation of people with disabilities in activities that are meaningful to them. Stineman has a medical degree from Hahnemann University.

Carl Suter, originally from the state of Illinois, is the executive director of the Council of State Administrators of Vocational Rehabilitation (CSAVR). Prior to joining the CSAVR, Mr. Suter was the director of the Illinois Office of Rehabilitation Services for five years. He oversaw a budget of nearly $500 million that included programs such as vocational rehabilitation, a $300 million in-home care program for persons with disabilities, three schools for children with disabilities, and disability adjudicative services for determining eligibility for benefits for the Social Security Disability Insurance Program and Supplemental Security Income in Illinois. During his tenure as State director, he led sweeping reforms of the Illinois Vocational Rehabilitation Services Program to provide world-class customer service to the nearly 70,000 individuals with disabilities served through its programs. Suter has also served as the executive director of the Illinois Council on Developmental Disabilities and as the associate director of the Illinois Association of Rehabilitation Facilities. Suter has a bachelor's degree in speech communication from the University of Illinois at Urbana-Champaign.

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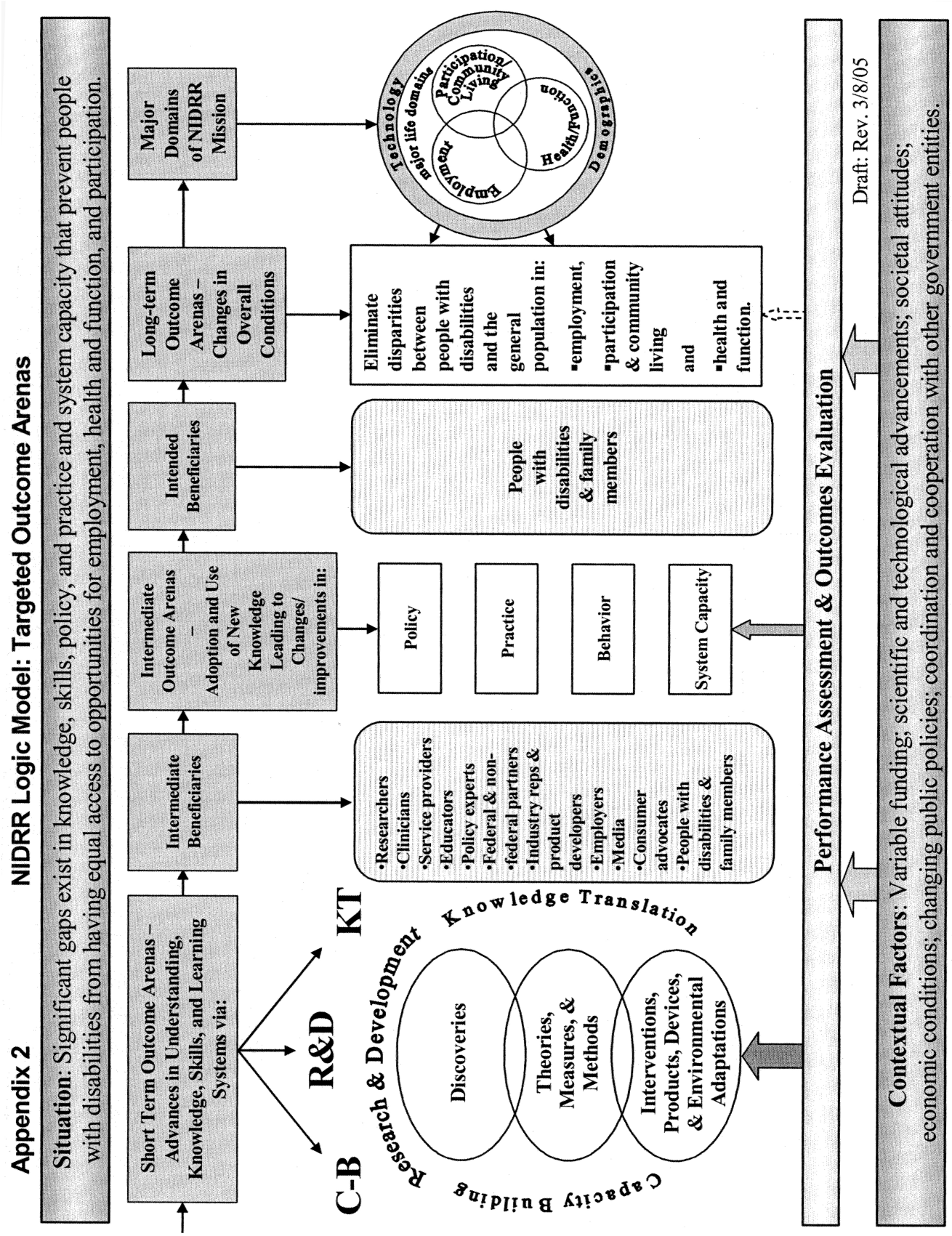

[FR Doc. 06–1255 Filed 2–14–06; 8:45 am]

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Federal Register

Vol. 71, No. 31

Wednesday, February 15, 2006

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FEDERAL REGISTER PAGES AND DATE, FEBRUARY

5155–5578 1
5579–5776 2
5777–5966 3
5967–6190 6
6191–6332 7
6333–6660 8
6661–6972 9
6973–7392 10
7393–7672 13
7673–7842 14
7843–8200 15

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7959 (See Memorandum of February 3, 2006) 6335
7976 5155
7977 5579
7978 5967
7979 6333
7980 6661

Administrative Orders:
Memorandums:
Memorandum of February 3, 2006 6335

Executive Orders:
13396 7389

7 CFR

301 ..... 5777, 6663, 7393
905 5157
927 7673
993 7395

Proposed Rules:
319 6011
457 6016
735 7445
985 5183
1250 6021
1427 7445
1496 6399

9 CFR

94 7401
352 6337

10 CFR

850 6858
851 6858

Proposed Rules:
170 7350
171 7350
430 6022

12 CFR

30 5779
201 6341
208 5779
225 5779
364 5779
568 5779
570 5779
611 5740
612 5740
614 5740
615 5740
618 5740
619 5740
620 5740
630 5740
1412 7402

Proposed Rules:
544 7695
552 7695
652 7446
655 7446

14 CFR

39 ..... 5159, 5162, 5581, 5584, 5969, 5971, 5976, 6191, 6194, 6342, 6343, 6663, 6665, 6667, 6669, 6673, 6973, 7626, 7843
71 ..... 7409, 7845, 7848
97 ..... 6345, 6675
212 5780

Proposed Rules:
23 5554
25 5554
27 5554
29 5554
33 5770
39 ..... 5620, 5623, 5626, 5796, 6025, 6400, 6402, 6404, 6408, 6411, 6413, 6415, 6417, 6420, 6681, 6683, 6685, 6687, 6691, 7446, 7449, 7698, 7874, 7876, 7878, 7880, 7883
71 ..... 7887, 7888, 7890, 7897
121 7892
135 7892
158 5188

16 CFR

100 5165

17 CFR

1 5587
145 5587
147 5587
229 7411
230 ..... 7411, 7677
232 ..... 5596, 7678

Proposed Rules:
228 6542
229 6542
239 6542
240 6542
245 6542
249 6542
274 6542

18 CFR

131 7852
292 7852

Proposed Rules:
40 6693

20 CFR

Proposed Rules:
656 7656

21 CFR

17 5979

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT FEBRUARY 15, 2006

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Pears grown in—
Oregon and Washington; published 2-14-06
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Marine mammals:
Commercial fishing authorizations—
Atlantic Large Whale Take Reduction Plan; published 2-16-06
Incidental taking—
Atlantic Large Whale Take Reduction Plan; published 2-13-06
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Acquisition regulations:
Head of contracting activity; definition; published 2-15-06
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Class D and E airspace; published 12-9-05

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Melons grown in—
Texas; comments due by 2-21-06; published 12-22-05 [FR 05-24339]
AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, foreign:
Fruits and vegetable importation; list; comments due by 2-21-06; published 12-22-05 [FR E5-07690]
AGRICULTURE DEPARTMENT
Commodity Credit Corporation
Export programs:
Supplier Credit Guarantee Program; comments due by 2-23-06; published 1-24-06 [FR 06-00610]
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fish and seafood promotion:
Species-specific seafood marketing councils; comments due by 2-23-06; published 1-24-06 [FR 06-00666]
Fishery conservation and management:
West Coast States and Western Pacific fisheries—
Guam longline fishing; prohibited area; comments due by 2-21-06; published 1-20-06 [FR E6-00650]
DEFENSE DEPARTMENT
Acquisition regulations:
Contract pricing and cost accounting standards; comments due by 2-21-06; published 12-20-05 [FR 05-24219]
Military justice:
Criminal jurisdiction over civilians employed by or accompanying Armed Forces outside U.S., and service and former service members; comments due by 2-21-06; published 12-22-05 [FR 05-23938]
ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Portland cement manufacturing industry; comments due by 2-23-06; published 1-9-06 [FR 06-00157]
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Alabama; comments due by 2-24-06; published 1-25-06 [FR E6-00907]
Air quality implementation plans; approval and promulgation; various States:
Colorado; comments due by 2-23-06; published 1-24-06 [FR 06-00630]
Montana; comments due by 2-23-06; published 1-24-06 [FR 06-00633]
North Dakota; comments due by 2-23-06; published 1-24-06 [FR 06-00628]
Texas; comments due by 2-21-06; published 1-19-06 [FR 06-00435]
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Benzaldehyde, etc.; comments due by 2-21-06; published 12-23-05 [FR E5-07693]
Difenoconazole, etc.; comments due by 2-21-06; published 12-21-05 [FR 05-24322]
Solid waste:
State municipal solid waste landfill permit programs—
Maine; comments due by 2-23-06; published 1-24-06 [FR 06-00627]
Maine; comments due by 2-23-06; published 1-24-06 [FR 06-00626]
Water pollution control:
National Pollutant Discharge Elimination System—
Storm water discharges for oil and gas exploration, production, processing, or treatment operations, or transmission facilities; comments due by 2-21-06; published 1-6-06 [FR E6-00036]
FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Individuals with hearing and speech disabilities; telecommunications relay services and speech-to-speech services; comments due by 2-22-06; published 2-1-06 [FR E6-01368]
Practice and procedure:
Benefits reserved for designated entitites; competitive bidding rules and procedures; comments due by 2-24-06; published 2-10-06 [FR 06-01290]
HEALTH AND HUMAN SERVICES DEPARTMENT
Energy Employees Occupational Illness Compensation Program Act:
Special Exposure Cohort; employee classes designation as members; procedures; comments due by 2-21-06; published 12-22-05 [FR 05-24358]
HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
Florida; comments due by 2-21-06; published 12-21-05 [FR E5-07631]
Organization, functions, and authority delegations:
Marine Safety Center; address change; comments due by 2-21-06; published 12-21-05 [FR 05-24319]
Regattas and marine parades:
VYC Fleet Parade; comments due by 2-21-06; published 1-19-06 [FR E6-00584]
HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Community development block grants:
Job-pirating activities; block grant assistance use prohibition; comments due by 2-21-06; published 12-23-05 [FR 05-24428]
INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Critical habitat designations—
Spikedace and loach minnow; comments due by 2-21-06; published 12-20-05 [FR 05-23999]
NATIONAL CREDIT UNION ADMINISTRATION
Credit unions:
Indirect vehicle loans; third-party servicing; comments due by 2-21-06; published 12-21-05 [FR E5-07584]
NUCLEAR REGULATORY COMMISSION
Plants and materials; physical protection:
Design basis threat; comments due by 2-22-06; published 1-24-06 [FR 06-00676]
PERSONNEL MANAGEMENT OFFICE
Administrative Law Judge Program; revision; comments due by 2-21-06; published 12-21-05 [FR 05-24286]
SECURITIES AND EXCHANGE COMMISSION
Securities:
Tender offer best-price rule; amendments; comments due by 2-21-06; published 12-22-05 [FR 05-24359]
SMALL BUSINESS ADMINISTRATION
Loan programs:
Business loans and development company loans; liquidation and litigation procedures; comments due by 2-24-06; published 1-25-06 [FR E6-00881]
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:

Aerospatiale; comments due by 2-21-06; published 1-19-06 [FR E6-00533]

Airbus; comments due by 2-21-06; published 1-19-06 [FR E6-00532]

Boeing; comments due by 2-21-06; published 11-23-05 [FR 05-23153]

Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 2-24-06; published 1-25-06 [FR E6-00901]

Fokker; comments due by 2-23-06; published 1-24-06 [FR E6-00795]

Area navigation routes; comments due by 2-23-06; published 1-9-06 [FR E6-00068]

Class E airspace; comments due by 2-21-06; published 1-6-06 [FR 06-00097]

VOR Federal airways; comments due by 2-23-06; published 1-9-06 [FR E6-00069]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Corporate estimated tax; comments due by 2-22-06; published 12-12-05 [FR 05-23872]

VETERANS AFFAIRS DEPARTMENT

Legal services, General Counsel, and miscellaneous claims:

Service organization representatives and agents; accreditation; comments due by 2-21-06; published 12-23-05 [FR E5-07759]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 4519/P.L. 109–172

State High Risk Pool Funding Extension Act of 2006 (Feb. 10, 2006; 120 Stat. 185)

Last List February 14, 2006

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